

72 Am. Jur. 2d State and Local Taxation Eight XXXVII Refs.

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVII. In General

[Topic Summary](#) | [Correlation Table](#)

Research References


West's Key Number Digest

West's Key Number Digest, [Domicile](#) 4(2)

West's Key Number Digest, [Taxation](#) 2068, 2173, 2212, 2400 to 2402, 3249, 3250

A.L.R. Library

A.L.R. Index, Taxes

West's A.L.R. Digest, [Domicile](#) 4(2)

West's A.L.R. Digest, [Taxation](#) 2068, 2173, 2212, 2400 to 2402, 3249, 3250

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 547

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVII. In General

§ 547. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2068, 2212, 2400, 2401

A.L.R. Library

[State Income Tax Treatment of Intangible Holding Companies](#), 11 A.L.R.6th 543

The place where property is taxable, as well as what governmental unit levies and collects the tax, is first determined by looking at the situs of the property. This is true whether residents or nonresidents of the taxing state own the property.¹ This principle applies to both real property² and personal property.³ The place of taxation of property may depend upon its character as real property, tangible personal property, or intangible personal property and may be affected by the permanency of the location and the purposes for which it is held.⁴

However broad the power of taxation in its character, and however searching in its extent, the power is limited to persons, property, or business within the State's jurisdiction,⁵ that is, to subjects within its jurisdiction or over which it can exercise dominion.⁶ In other words, an appraisal district may assess for taxation only that property within its district.⁷

A State has the power to fix the time when property within its jurisdiction acquires a taxable situs, but it cannot fix the taxable situs of a thing that has never come into the state and over which it has no power of control.⁸

What constitutes a taxing district, and whether it may be confined to, or disregard, boundary lines of counties, townships, or municipalities, is a matter wholly within the discretion of the legislature.⁹

All subjects over which the sovereign power of a State extends are objects of taxation; those over which it does not extend are exempt from taxation.¹⁰

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Lawrence v. State Tax Commission of Mississippi](#), 286 U.S. 276, 52 S. Ct. 556, 76 L. Ed. 1102, 87 A.L.R. 374 (1932); [Southern Ry. Co. v. Commonwealth of Kentucky](#), 274 U.S. 76, 47 S. Ct. 542, 71 L. Ed. 934 (1927).
As to place of taxation in regard to income taxes, see §§ 470 to 483.
- ² [§ 549](#).
- ³ [§ 554](#).
- ⁴ [Crane Co. v. City Council of Des Moines](#), 208 Iowa 164, 225 N.W. 344, 76 A.L.R. 801 (1929).
- ⁵ [Wheeling Steel Corp. v. Fox](#), 298 U.S. 193, 56 S. Ct. 773, 80 L. Ed. 1143 (1936); [Farmers' Loan & Trust Co. v. State of Minnesota](#), 280 U.S. 204, 50 S. Ct. 98, 74 L. Ed. 371, 65 A.L.R. 1000 (1930).
- ⁶ [Shaffer v. Carter](#), 252 U.S. 37, 40 S. Ct. 221, 64 L. Ed. 445 (1920); [Louisville & J. Ferry Co. v. Commonwealth of Kentucky](#), 188 U.S. 385, 23 S. Ct. 463, 47 L. Ed. 513 (1903).
- ⁷ [Devon Energy Production, L.P. v. Hockley County Appraisal Dist.](#), 178 S.W.3d 879 (Tex. App. Amarillo 2005).
- ⁸ [§ 548](#).
- ⁹ [Department of Local Government Finance v. Griffin](#), 784 N.E.2d 448 (Ind. 2003).
- ¹⁰ [Curry v. McCanless](#), 307 U.S. 357, 59 S. Ct. 900, 83 L. Ed. 1339, 123 A.L.R. 162 (1939).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 548

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVII. In General

§ 548. Date as to which situs is determined

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 🔑 2212, 2400

A.L.R. Library

[State Income Tax Treatment of Intangible Holding Companies](#), 11 A.L.R.6th 543

While a State cannot fix a taxable situs for property that has never come into the state, and over which it has no power of control, it does have power to fix the time when property within its jurisdiction may acquire a taxable situs.¹

A State may make the ownership of taxable property relate to any day or any period of the year.² Thus, a State may base its tax upon the average amount of property within the state owned by the taxpayer during the year.³ If the taxable situs relates to a day certain in each year, no taxes can legally be assessed and levied for that year unless the conditions for liability exist on assessment day⁴ although there is also contrary authority.⁵ Some states provide that property brought into the state after assessment day is subject to taxation for the current year. Such statute has been enforced against property brought in from another state on which a tax had been assessed and paid for the same year.⁶ On the other hand, there is authority that a State into which property has been moved cannot assess a tax on that property where a tax has already been paid in the state from which the property was moved.⁷ Courts, in considering statutes of this character, generally seek to avoid a construction that would lead to double taxation of property in different counties or municipalities of the same state.⁸ However, property brought from one taxing district to another taxing district in the same state after assessment day has been held taxable if it was not assessed in the former district.⁹

Post-assessment changes in value, situs, and ownership of taxed property require no change in tax for the corresponding assessment year.¹⁰

Interstate commerce property may have tax situs in more than one state; each state in which it has tax situs is allowed to tax property so long as it does so on a reasonably apportioned basis as required by the interstate commerce clause.¹¹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ George F. Hazelwood Co. v. Pitsenbarger, 149 W. Va. 485, 141 S.E.2d 314 (1965).
- ² United Telephone Mut. Aid Corp. v. State, 87 N.W.2d 54 (N.D. 1957).
- ³ Shotwell v. Moore, 129 U.S. 590, 9 S. Ct. 362, 32 L. Ed. 827 (1889).
- ⁴ Box Elder County v. Conley, 75 Utah 199, 284 P. 105 (1930).
- ⁵ Mesa Leasing Ltd. v. City of Burlington, 169 Vt. 93, 730 A.2d 1102 (1999).
- ⁶ Griggsby Const. Co. v. Freeman, 108 La. 435, 32 So. 399 (1902).
- ⁷ Knoefler Honey Farms v. Sherman County, 196 Neb. 435, 243 N.W.2d 760 (1976).
- ⁸ Johnston v. Whatcom County, 27 Wash. 95, 67 P. 569 (1902).
- ⁹ Hammond Lumber Co. v. Smart, 129 La. 945, 57 So. 277 (1912).
- ¹⁰ Kenai Peninsula Borough v. Arndt, 958 P.2d 1101 (Alaska 1998).
- ¹¹ Beelman Truck Co. v. Ste. Genevieve County Bd. of Equalization, 861 S.W.2d 557 (Mo. 1993), as modified on denial of reh'g, (Sept. 29, 1993).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 549

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVII. In General

§ 549. Real estate

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2402

Real estate is subject to taxation in the state where it is located, regardless of whether the owner is a resident or a nonresident,¹ and it is taxable only in that state.² Even when a State has, by agreement, ceded jurisdiction over a portion of its territory to another state, it retains the exclusive power to tax the real estate within such territory.³ The recognition by two different states of the title and jurisdiction of one of them over certain territory near the boundary is conclusive for residents within such territory as to taxation of real estate located there.⁴

The principle that real estate should be taxed only where situated is usually applied between different counties, towns, municipalities, and other taxing districts of a state.⁵ A municipal corporation cannot acquire jurisdiction over territory for tax purposes by prescription or by the fact that it has always taxed that property without encountering objections. Municipal corporations are creatures of the legislature, and their boundaries and jurisdiction can be changed only by the legislature itself.⁶ However, this exercise of tax jurisdiction is a circumstance tending strongly to establish the fact of its existence; in the absence of direct evidence to the contrary, this would be conclusive.⁷

Where the surface acreage and the sub-surface acreage of property containing minerals are not the same, a county appraisal district is prohibited from using an appraisal method that includes the subsurface mineral reservoir property lying outside the county borders in its assessment of the property for tax purposes and instead must assess only the mineral formation lying underneath the county.⁸

Observation:

A corporate owner of real property consisting of a portion of a lake does not have an easement by necessity allowing it access to landlocked property so as to support the corporation's personal liability for taxes allegedly owed to the county on the easement, given the absence of a showing that, during the relevant time period, the corporation had any need to access the property; moreover, such an easement would not equate with actual possession as required for taxation.⁹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ Union Refrigerator Transit Co. v. Commonwealth of Kentucky, 199 U.S. 194, 26 S. Ct. 36, 50 L. Ed. 150 (1905).
- ² Great Southern Life Ins. Co. v. City of Austin, 112 Tex. 1, 243 S.W. 778 (1922).
- ³ Central R. Co. of New Jersey v. Jersey City, 209 U.S. 473, 28 S. Ct. 592, 52 L. Ed. 896 (1908).
- ⁴ Phillips v. Payne, 92 U.S. 130, 23 L. Ed. 649, 1875 WL 17769 (1875).
- ⁵ Guess v. Riverside Farms, Inc., 340 So. 2d 6 (Miss. 1976); Nacogdoches Independent School Dist. v. McKinney, 504 S.W.2d 832 (Tex. 1974), *opinion supplemented*, 513 S.W.2d 5 (Tex. 1974).
- ⁶ Inhabitants of Eden v. Pineo, 108 Me. 73, 78 A. 1126 (1911).
- ⁷ Russell v. C.N. Robinson & Co., 153 Ala. 327, 44 So. 1040 (1907).
- ⁸ Devon Energy Production, L.P. v. Hockley County Appraisal Dist., 178 S.W.3d 879 (Tex. App. Amarillo 2005).
- ⁹ In re Viewpoint Realty Corp., 17 A.D.3d 363, 792 N.Y.S.2d 566 (2d Dep't 2005).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 550

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVII. In General

§ 550. Water power, dams, and flowage rights

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2173, 2400

Water is a species of real property, and the right to use it is taxable as a possessory interest.¹ Water power rights, while not independent taxable apart from the land to which they are appurtenant, undoubtedly add to the value of the land. This additional value is properly considered in assessing land for purposes of taxation.² Even cases that adopt the view that water power is not an independent subject of taxation sometimes refer to the value of the dam or water power as if it were a subject of tax because in many cases, this represents a greater part of the taxable value of the property to which it is related.³

The tax is imposed where the real estate to which the value is added is located.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [§ 147.](#)

² [§ 660.](#)

³ [Kendrick v. Twin Lakes Reservoir Co.](#), 58 Colo. 281, 144 P. 884 (1914).

⁴ [Slatersville Finishing Co. v. Greene](#), 40 R.I. 410, 101 A. 226 (1917).

72 Am. Jur. 2d State and Local Taxation § 551

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVII. In General

§ 551. Bridges over boundary waters

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2400, 2402

In determining jurisdiction to tax bridges over watercourses forming boundary lines, in the absence of any specific statutory provision, whatever portion of the bridge lies within the limits of a state or taxing district may be assessed for taxation there.¹ In the case of a bridge across a stream that forms the boundary between two states, each state may tax only that part of the bridge situated within its limits.²

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Hudson River Bridge Co. v. Patterson, 74 N.Y. 365, 1878 WL 12665 \(1878\).](#)

² [Ft. Smith & V.B. Bridge Co. v. Hawkins, 54 Ark. 509, 16 S.W. 565 \(1891\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 552

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVII. In General

§ 552. Excise taxes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3249, 3250

The power to levy an excise upon performing an act or engaging in an occupation does not depend upon the domicile of the persons subject to the excise or the physical location of the property used in connection with the act or occupation. Rather, it depends upon the place where the act is performed or the occupation engaged in. A State may tax the performance of an act within its limits and enforce payment of the tax even when the act is performed by nonresidents of the state with respect to property that has never been within its boundaries provided that the act subject to the tax is performed within the state.¹ Its power to impose a tax on transactions within the state is not affected by the fact that the exaction of the tax is contingent upon events occurring outside the state.²

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [State of Wisconsin v. J.C. Penney Co.](#), 311 U.S. 435, 61 S. Ct. 246, 85 L. Ed. 267, 130 A.L.R. 1229 (1940); [People ex rel. Hatch v. Reardon](#), 184 N.Y. 431, 77 N.E. 970 (1906), *aff'd*, 204 U.S. 152, 27 S. Ct. 188, 51 L. Ed. 415 (1907). As to a State's power to impose license or privilege tax, generally, see, [Am. Jur. 2d, Licenses and Permits](#) §§ 7, 9.

² [State of Wisconsin v. J.C. Penney Co.](#), 311 U.S. 435, 61 S. Ct. 246, 85 L. Ed. 267, 130 A.L.R. 1229 (1940).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 553

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVII. In General

§ 553. Domicile for purposes of taxation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Domicile](#)  4(2)

West's Key Number Digest, [Taxation](#)  2400

The domicile of a person for purposes of determining the place where his or her personal property is taxable is ordinarily fixed by application of the rule that determines the legal domicile of a person for any other purpose.¹ Usually, that is the place of his or her fixed permanent home or residence to which he or she has the intention of returning whenever absent and from which he or she has no present intention of moving.² Residence is not synonymous with domicile for tax purposes, however, though the two terms are closely related; a person may have only one legal domicile at one time, but he or she may have more than one residence.³

Distinction:

For purposes of taxation, “residence” means living in a particular locality, but “domicile” means living in that locality with intent to make it a fixed and permanent home; “residence” simply requires bodily presence as an inhabitant in a given place while “domicile” requires bodily presence in that place and also an intention to make it one’s domicile.⁴

One may change domicile and establish a new one for tax purposes even though the person’s motive is to diminish his or her amount of taxes or avoid taxation.⁵ However, there can be no establishment of a new domicile unless there is proof of an intent to abandon an original domicile.⁶ Domicile is a matter of intent involving physical presence or contact with the given jurisdiction and an intention to remain in that jurisdiction or to return to that jurisdiction after leaving it.⁷ A taxpayer attempting to change the state in which he or she is domiciled must thus actually reside in the new state at the time when the

intent is formed to make the new state the taxpayer's permanent home.⁸ Moreover, to the extent that residence as well as domicile depend upon intent, that intention is to be gathered from one's acts.⁹ Accordingly, when a taxpayer announces an intent to make a new abode the taxpayer's home, the trier of fact may consider the acts and circumstances of the taxpayer in evaluating the sincerity of the announced intent.¹⁰

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ Barhydt v. Cross, 156 Iowa 271, 136 N.W. 525 (1912); Kerby v. Town of Charlestown, 78 N.H. 301, 99 A. 835 (1916).
- ² Matter of Tressing's Estate, 86 Wis. 2d 502, 273 N.W.2d 271 (1979).
- ³ Johnson v. Otey, 299 S.W.3d 308 (Mo. Ct. App. S.D. 2009).
- ⁴ Johnson v. Otey, 299 S.W.3d 308 (Mo. Ct. App. S.D. 2009).
- ⁵ State ex rel. Orr v. Buder, 308 Mo. 237, 271 S.W. 508, 39 A.L.R. 1199 (1925).
- ⁶ Samuelsson v. Director, New Jersey Div. of Taxation, 22 N.J. Tax 243, 2005 WL 1175138 (2005).
- ⁷ Samuelsson v. Director, New Jersey Div. of Taxation, 22 N.J. Tax 243, 2005 WL 1175138 (2005).
- ⁸ Sanchez v. Commissioner of Revenue, 770 N.W.2d 523 (Minn. 2009).
- ⁹ Noble v. Franchise Tax Bd., 118 Cal. App. 4th 560, 13 Cal. Rptr. 3d 363 (2d Dist. 2004).
- ¹⁰ Sanchez v. Commissioner of Revenue, 770 N.W.2d 523 (Minn. 2009).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation Eight XXXVIII A Refs.

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

A. In General

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2212](#), [2216](#), [2400](#), [2401](#), [2403](#)

A.L.R. Library

A.L.R. Index, Taxes

West's A.L.R. Digest, [Taxation](#)  [2212](#), [2216](#), [2400](#), [2401](#), [2403](#)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 554

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

A. In General

§ 554. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2212, 2401, 2403

Personal property may be assessed for taxation only in the state where it has a situs.¹ An ancient fiction, generally recognized by comity, is expressed by the maxim “mobilia sequuntur personam.” The situs of personal property, however ponderous and unwieldy and wherever actually kept or located, was at the owner’s domicile and subject to the jurisdiction of the owner’s sovereign. For purposes of the law, its location changed with every change of the owner’s domicile.²

This rule expresses a comprehensive and general rule applicable to the taxation of personal property,³ especially intangible personal property.⁴ In the absence of statutes to the contrary, and of anything to show that it has acquired an actual situs elsewhere, the general rule is that for purposes of taxation, all personal property has its situs at the domicile of the owner.⁵ Unless it has acquired a definite situs elsewhere, or unless other provision is made by statute, such property is taxable to the owner in the county, city, or town or other taxing district where the owner lives and has his or her domicile.⁶ This is true of personal property of every description.⁷

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Van Alen v. Stein](#), 119 R.I. 347, 376 A.2d 1383 (1977).

² [Am. Jur. 2d, Conflict of Laws](#) § 41.

³ [Keesecker v. Bird](#), 200 W. Va. 667, 490 S.E.2d 754 (1997).

⁴ As to the situs of intangible property, see §§ [565](#) to [576](#).

⁵ Johnson v. Otey, 299 S.W.3d 308 (Mo. Ct. App. S.D. 2009).

⁶ Winchester and Western R. Co. v. State Corp. Com'n, 236 Va. 473, 374 S.E.2d 66 (1988).

⁷ Johnson Oil Refining Co. v. State ex rel. Templeton, 1935 OK 663, 172 Okla. 552, 46 P.2d 546 (1935).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 555

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax


XXXVIII. Personal Property

A. In General

§ 555. Limitations on application of maxim “mobilia sequuntur personam”

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West’s Key Number Digest

West’s Key Number Digest, [Taxation](#)  2212, 2401, 2403

A.L.R. Library

[Situs of aircraft, rolling stock, and vessels for purposes of property taxation, 3 A.L.R.4th 837](#)

The maxim “mobilia sequuntur personam” is only a fiction of law, having its origin in considerations of convenience and public policy, and must yield whenever the purposes of convenience or justice necessitate ascertaining the actual situs of such property.¹ It seldom has been permitted to interfere with the rights of taxation of a state where the property of a nonresident was located² and cannot prevail when inconsistent with express provisions of the statute.³ Indeed, the situs of personal property for purposes of taxation is determined by the legislature, and the legislature may provide different rules for different kinds of property and may change the rules from time to time.⁴ Moreover, the idea of a “physical situs” as the proper place for taxation, in analogy with the situs of “real property,” enables the State from which such property receives the bulk of its protection to impose a share of the cost of protection upon such property.⁵ Taxed persons and property ought to be associated in some measurable way with the governmental communities levying the tax and thereby benefit from the general services provided.⁶ The separation of the situs of personal property from the domicile of the owner for the purposes of taxation has become a familiar doctrine,⁷ and the maxim mobilia sequuntur personam no longer controls taxation of personal property that has an actual situs other than at the owner’s domicile. It may be taxed where it is situated even though the domicile of the owner is elsewhere.⁸ Thus, the test of situs for taxation purposes is the place of its location and use.⁹ The taxing power of the State may be exercised over all property coming temporarily within its territory for trade, business, or convenience unless some constitutional limitation is thereby violated.¹⁰ However, constitutionally, a State can continue to tax property, even if it leaves that state, unless the property is shown to have acquired a tax situs elsewhere.¹¹ A nonresident is, however, protected

against discrimination as compared with a resident by fundamental constitutional provisions.¹²

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ Union Refrigerator Transit Co. v. Commonwealth of Kentucky, 199 U.S. 194, 26 S. Ct. 36, 50 L. Ed. 150 (1905).
- ² Adams Exp. Co. v. Ohio State Auditor, 166 U.S. 185, 17 S. Ct. 604, 41 L. Ed. 965 (1897).
- ³ Endicott, Johnson & Co. v. Multnomah County, 96 Or. 679, 190 P. 1109 (1920).
- ⁴ In re Appeal of SAS Institute Inc. from a decision of Wake County Bd. of Com’rs for 2006, 200 N.C. App. 238, 684 S.E.2d 444 (2009).
- ⁵ Nacogdoches Independent School Dist. v. McKinney, 504 S.W.2d 832 (Tex. 1974), opinion supplemented, 513 S.W.2d 5 (Tex. 1974); Mesa Leasing Ltd. v. City of Burlington, 169 Vt. 93, 730 A.2d 1102 (1999).
- ⁶ Salt Lake City Corp. v. Property Tax Div. of Utah State Tax Com’n, 1999 UT 41, 979 P.2d 346 (Utah 1999).
- ⁷ Union Refrigerator Transit Co. v. Commonwealth of Kentucky, 199 U.S. 194, 26 S. Ct. 36, 50 L. Ed. 150 (1905); Levin-Townsend Computer Corp. v. City of Hartford, 166 Conn. 405, 349 A.2d 853 (1974); Van Alen v. Stein, 119 R.I. 347, 376 A.2d 1383 (1977).
- ⁸ Buck v. Beach, 206 U.S. 392, 27 S. Ct. 712, 51 L. Ed. 1106 (1907); Harkness v. Seaboard Air Line Ry., 99 Fla. 1027, 128 So. 264 (1930).
- ⁹ Alaska Flight Services, LLC v. Dallas Central Appraisal Dist., 261 S.W.3d 884 (Tex. App. Dallas 2008); Hogan v. Norfolk County, 198 Va. 733, 96 S.E.2d 744 (1957).
- ¹⁰ Hall v. American Refrigerator Transit Co., 24 Colo. 291, 51 P. 421 (1897), *aff’d*, 174 U.S. 70, 19 S. Ct. 599, 43 L. Ed. 899 (1899).
- ¹¹ Johnson v. Otey, 299 S.W.3d 308 (Mo. Ct. App. S.D. 2009).
- ¹² Sprague v. Fletcher, 69 Vt. 69, 37 A. 239 (1896).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 556

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

A. In General

§ 556. Taxation by one state as exclusive of right of another, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2212, 2216, 2400, 2403

As a matter of constitutional power, a State that otherwise has the right to tax personal property is not deprived thereof by the fact that the property is subject to taxation, or that a tax has actually been paid thereon, in another state for the same period.¹ The right of the State to tax where personal property, whether tangible² or intangible,³ has an actual situs, or where the owner is domiciled, is no longer open to question. The mere fact that personal property is subject to, or has actually been subjected to the payment of, taxes at the domicile of the owner is not a bar to its taxation in another state where it has an actual situs.⁴ However, the domiciliary state is precluded from imposing an ad valorem tax on any property to the extent that it could be taxed by another state, not merely on such property as is subjected to tax elsewhere.⁵ Indeed, once the taxpayer has made a showing that its property has acquired a tax situs in another state, the taxing authority must make an appropriate apportionment of the value and impose a tax only on that portion of the value which is appropriate.⁶ Moreover, if personal property acquires a tax situs in another state, the Commerce Clause⁷ precludes the state of domicile from taxing the property to the extent that it can be taxed in that other state.⁸ A taxpayer seeking apportionment of ad valorem taxes has no obligation to show that it is actually paying ad valorem taxes in a state other than the domiciliary state; it has only to demonstrate that because it operates the taxed object in another state, that other State has constitutional authority to tax the object as well.⁹

No State is bound to make its tax laws harmonize with those of other states.¹⁰ If possible, courts construe taxing statutes of the state of the owner's domicile—even when phrased in broad terms—to exclude personalty in another state where it has acquired a tax situs.¹¹ However, this is not a declaration of an exclusive right or power of taxation in the state of the actual situs or a prohibition of taxation by both the state of the situs and the state of the domicile. It is generally agreed that no double taxation in a constitutional sense is involved in the taxation of the same personal property by different states for the same period;¹² the injustice resulting from what, in practical effect, amounts to double taxation has often been recognized and deprecated by courts and is not infrequently, in actual practice, mitigated by statutory provisions designed to exempt from local taxation personal property that has been subjected to the burden of taxation in another state.¹³ Intent or purpose to impose double taxation upon given property is not presumed.¹⁴ Decisions of the U.S. Supreme Court deny the power of the State where the owner is domiciled to tax tangible personal property that is permanently located in another state;¹⁵ however,

until personal property has acquired another tax situs, it is appropriate to assume that the domicile is the only state affording the opportunities, benefits, or protection which due process demands.¹⁶ There is no constitutional objection, however, to intangible property to be taxed in two different states as when it is taxed both in the domicile of the owner and in a state where it has acquired a business situs.¹⁷

The power of taxation is exercised upon the assumption of an equivalent granted to the taxpayer in the protection of his or her person and property, in adding to the value of such property, or in the creation and maintenance of public conveniences in which he or she shares. If the taxing power is in no position to render these services, it is beyond the power of the legislature to lay a tax; it would constitute a taking of property without due process of law.¹⁸

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ Citizens' Nat. Bank of Cincinnati v. Durr, 257 U.S. 99, 42 S. Ct. 15, 66 L. Ed. 149 (1921); Coca-Cola Co. v. City of Atlanta, 152 Ga. 558, 110 S.E. 730, 23 A.L.R. 1339 (1922).
- ² § 558.
- ³ § 565.
- ⁴ Fidelity & Columbia Trust Co. v. City of Louisville, 245 U.S. 54, 38 S. Ct. 40, 62 L. Ed. 145 (1917); Wright v. Louisville & N.R. Co., 195 U.S. 219, 25 S. Ct. 16, 49 L. Ed. 167 (1904).
- ⁵ Central R. Co. of Pa. v. Com. of Pa., 370 U.S. 607, 82 S. Ct. 1297, 8 L. Ed. 2d 720 (1962); Fulton County Bd. of Tax Assessors v. Harmon Bros. Charter Service, Inc., 261 Ga. App. 534, 583 S.E.2d 179 (2003).
- ⁶ Fulton County Bd. of Tax Assessors v. Harmon Bros. Charter Service, Inc., 261 Ga. App. 534, 583 S.E.2d 179 (2003).
- ⁷ U.S. Const. Art. I, § 8, cl. 3.
- ⁸ Flight Options, LLC v. State, Dept. of Revenue, 172 Wash. 2d 487, 259 P.3d 234 (2011).
- ⁹ Fulton County Bd. of Tax Assessors v. Harmon Bros. Charter Service, Inc., 261 Ga. App. 534, 583 S.E.2d 179 (2003) (tax on buses used in interstate commerce).
- ¹⁰ Kidd v. State of Alabama, 188 U.S. 730, 23 S. Ct. 401, 47 L. Ed. 669 (1903); Commercial Nat. Bank v. Chambers, 182 U.S. 556, 21 S. Ct. 863, 45 L. Ed. 1227 (1901).
- ¹¹ Buck v. Beach, 206 U.S. 392, 27 S. Ct. 712, 51 L. Ed. 1106 (1907); Delaware, Lackawanna & W R Co v. Com. of Pennsylvania, 198 U.S. 341, 25 S. Ct. 669, 49 L. Ed. 1077 (1905).
- ¹² Maass v. Higgins, 312 U.S. 443, 61 S. Ct. 631, 85 L. Ed. 940, 132 A.L.R. 1035 (1941); Curry v. McCanless, 307 U.S. 357, 59 S. Ct. 900, 83 L. Ed. 1339, 123 A.L.R. 162 (1939); Ryder Truck Rental, Inc. v. County of Chesterfield, 248 Va. 575, 449 S.E.2d 813 (1994).
- ¹³ Standard Oil Co. v. Com. ex rel. Allphin, 311 S.W.2d 372 (Ky. 1957).
- ¹⁴ Maass v. Higgins, 312 U.S. 443, 61 S. Ct. 631, 85 L. Ed. 940, 132 A.L.R. 1035 (1941).
- ¹⁵ § 563.
- ¹⁶ §§ 560, 564.
- ¹⁷ § 576.
- ¹⁸ Union Refrigerator Transit Co. v. Commonwealth of Kentucky, 199 U.S. 194, 26 S. Ct. 36, 50 L. Ed. 150 (1905); Salt Lake City Corp. v. Property Tax Div. of Utah State Tax Com'n, 1999 UT 41, 979 P.2d 346 (Utah 1999).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation Eight XXXVIII B Refs.

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

B. Tangible Personalty

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2201](#), [2212](#), [2214](#), [2215](#), [2403](#)

A.L.R. Library

A.L.R. Index, Taxes

West's A.L.R. Digest, [Taxation](#)  [2201](#), [2212](#), [2214](#), [2215](#), [2403](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 21, 63, 241](#)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 557

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax


XXXVIII. Personal Property

B. Tangible Personalty

§ 557. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2212, 2403

A.L.R. Library

[Situs of tangible personal property for purposes of property taxation, 2 A.L.R.4th 432](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 21](#) (Complaint, petition, or declaration—Allegation—Assessor's wrongful addition of property to assessment roll)

Historically, a literal application of the principle of *mobilia sequuntur personam* to taxation of personal property not only justified a sovereign in taxing the property of its subjects although it was kept outside its territory but also prohibited the sovereign from taxing property of persons who were not its subjects which was kept within its territory.¹ With changing economic conditions and increasing accumulations of wealth in the form of personal property kept by owners at places other than their place of residence or domicile, it became obvious that the principle of *mobilia sequuntur personam* could not properly be applied as the ultimate test of situs of tangible personalty for purposes of taxation.² That principle is inapplicable where, contrary to the principle that it establishes, the property has acquired an actual situs in a jurisdiction other than the domicile of the owner.³

Between taxing units within the state, tangible personal property is ordinarily taxable to the owner in the taxing district where the owner has domicile if the property has not acquired a taxable situs elsewhere. In the case of property owned by a corporation, it is taxable at the place where the principal business of the corporation is transacted.⁴ Moreover, constitutionally, a State can continue to tax personal property with a tax situs within the state, even if it leaves the state, unless the property is shown to have acquired a tax situs elsewhere.⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ Pullmans Palace Car Co. v. Com. of Pennsylvania, 141 U.S. 18, 11 S. Ct. 876, 35 L. Ed. 613 (1891); Ray v. Board of Com'rs of Doniphan County, 173 Kan. 859, 252 P.2d 899 (1953).
- ² Union Refrigerator Transit Co. v. Commonwealth of Kentucky, 199 U.S. 194, 26 S. Ct. 36, 50 L. Ed. 150 (1905); Brock & Co. v. Board of Sup'rs of Los Angeles County, 8 Cal. 2d 286, 65 P.2d 791, 110 A.L.R. 700 (1937).
- ³ Union Refrigerator Transit Co. v. Commonwealth of Kentucky, 199 U.S. 194, 26 S. Ct. 36, 50 L. Ed. 150 (1905).
- ⁴ George M. Brewster & Son v. Borough of Bogota, 20 N.J. Super. 487, 90 A.2d 58 (App. Div. 1952).
- ⁵ Johnson v. Otey, 299 S.W.3d 308 (Mo. Ct. App. S.D. 2009).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 558

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

B. Tangible Personalty

§ 558. Where property is found or has actual situs

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2201, 2212, 2403

The actual situs of visible tangible personal property, and not the domicile of its owner, usually determines the place of taxation.¹ For purposes of taxation, rights in tangibles are regarded as localized at the place where the tangible itself is located.² This is upon the basis of the theory that inasmuch as the property enjoys the protection of the state where it is located, it should be made to contribute to the expenses incident to its protection in the state in common with all other property within the jurisdiction.³ The State where the property is permanently located has the exclusive jurisdiction to tax.⁴ Taxing jurisdiction in such cases rests upon the power of a government and its agencies to possess and exclude others from possession of such tangibles and thus to exclude them from enjoying rights in tangibles located within its territory.⁵

Tangible personal property, generally, is taxable by the State of its actual situs regardless of the domicile of the owner. It is not affected by the fact that the property is employed in interstate transportation either by water or land.⁶

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ Curry v. McCannless, 307 U.S. 357, 59 S. Ct. 900, 83 L. Ed. 1339, 123 A.L.R. 162 (1939); C. A. Powley Co. v. Department of Local Government Affairs, 43 Ill. App. 3d 39, 1 Ill. Dec. 454, 356 N.E.2d 642 (3d Dist. 1976).
- ² Curry v. McCannless, 307 U.S. 357, 59 S. Ct. 900, 83 L. Ed. 1339, 123 A.L.R. 162 (1939); Nacogdoches Independent School Dist. v. McKinney, 504 S.W.2d 832 (Tex. 1974), opinion supplemented, 513 S.W.2d 5 (Tex. 1974).
- ³ Curry v. McCannless, 307 U.S. 357, 59 S. Ct. 900, 83 L. Ed. 1339, 123 A.L.R. 162 (1939); In re Wise, 1949 OK 91, 201 Okla. 395, 206 P.2d 218 (1949).

⁴ § 559.

⁵ *Curry v. McCanless*, 307 U.S. 357, 59 S. Ct. 900, 83 L. Ed. 1339, 123 A.L.R. 162 (1939); *Wm. J. Kennedy & Son, Inc. v. Town of Albany*, 66 Wis. 2d 447, 225 N.W.2d 624 (1975).

⁶ *Old Dominion S.S. Co. v. Commonwealth of Virginia*, 198 U.S. 299, 25 S. Ct. 686, 49 L. Ed. 1059 (1905).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 559

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax


XXXVIII. Personal Property

B. Tangible Personalty

§ 559. Permanence of location or situs within taxing state

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2214, 2215

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 63](#) (Complaint, petition, or declaration—For refund of property taxes—Assessment of personal property having permanent situs outside taxing district)

Before tangible personal property may be taxed in a state other than the domicile of the owner, it must have acquired a more or less permanent location in that state and not merely a transient or temporary one.¹ A taxable situs in another state is demonstrated by showing that the property at issue has been situated in that situs with a degree of permanency to distinguish it from property which is in the state on a purely temporary or transitory basis.² Generally, chattels merely temporarily within the limits of a state are not subject to its property taxes.³ Tangible personal property passing through or in the state for temporary purposes only, if it belongs to a nonresident, is not subject to taxation under a statute providing that all real and personal property in the state shall be assessed and taxed.⁴ The state of origin remains the permanent situs of property for the purpose of taxation notwithstanding the occasional excursion of the property to foreign parts.⁵ However, property sent into a state by a nonresident, to be used or employed permanently there, must bear its fair share of the burden of taxation although no one unit of such property is ever more than temporarily located within the taxing state.⁶ A criterion is whether the property is there for an indefinite time or some considerable definite time and whether it is used or exists there to be used in much the same manner as other property is used in that community.⁷

Generally, jurisdiction to tax personal property exists based on the length of time that property is located within the state.⁸ The length of time that property leased by a corporation remains at a situs is an essential element in determining whether property acquires a local situs and is removed from inclusion with other personal property owned by the corporation at its

principal place of business.⁹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ In re Appeal of SAS Institute Inc. from a decision of Wake County Bd. of Com'rs for 2006, 200 N.C. App. 238, 684 S.E.2d 444 (2009); Nacogdoches Independent School Dist. v. McKinney, 504 S.W.2d 832 (Tex. 1974), opinion supplemented, 513 S.W.2d 5 (Tex. 1974).
- ² A/K Service, LLC v. Harris County Appraisal Dist., 2008 WL 4890140 (Tex. App. Houston 1st Dist. 2008).
- ³ In re Appeal of SAS Institute Inc. from a decision of Wake County Bd. of Com'rs for 2006, 200 N.C. App. 238, 684 S.E.2d 444 (2009).
- ⁴ In re Appeal of SAS Institute Inc. from a decision of Wake County Bd. of Com'rs for 2006, 200 N.C. App. 238, 684 S.E.2d 444 (2009).
- ⁵ People of State of New York ex rel. New York Cent. & H.R.R. Co. v. Miller, 202 U.S. 584, 26 S. Ct. 714, 50 L. Ed. 1155 (1906); Guinness v. King County, 32 Wash. 2d 503, 202 P.2d 737, 6 A.L.R.2d 1361 (1949).
- ⁶ Mikos v. Ringling Bros.-Barnum & Bailey Combined Shows, Inc., 368 So. 2d 884, 2 A.L.R.4th 421 (Fla. 2d DCA 1979); Berkshire v. Douglas County Bd. of Equalization, 200 Neb. 113, 262 N.W.2d 449 (1978); Appraisal Review Bd. of Galveston County, Tex. v. Tex-Air Helicopters, Inc., 970 S.W.2d 530 (Tex. 1998).
- ⁷ In re Appeal of SAS Institute Inc. from a decision of Wake County Bd. of Com'rs for 2006, 200 N.C. App. 238, 684 S.E.2d 444 (2009).
- ⁸ A/K Service, LLC v. Harris County Appraisal Dist., 2008 WL 4890140 (Tex. App. Houston 1st Dist. 2008).
- ⁹ Berkshire v. Douglas County Bd. of Equalization, 200 Neb. 113, 262 N.W.2d 449 (1978).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 560

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax


XXXVIII. Personal Property

B. Tangible Personalty

§ 560. Meaning of “permanency” within rule

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West’s Key Number Digest

West’s Key Number Digest, [Taxation](#)  2214, 2215

Permanency in the sense of permanency of real estate is not essential to the establishment of a taxable situs for tangible personal property.¹ It means a more or less permanent location for the time being.² Permanency involves the concept of being associated with the general mass of property in the state as contrasted with a transient status.³ The ownership and uses for which the property is designed, and the circumstances of its being in the state, are so various that the question is often more a one of fact than of law.⁴ The test perhaps is whether property is within the state solely for use and profit there.⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ In re Appeal of SAS Institute Inc. from a decision of Wake County Bd. of Com’rs for 2006, 200 N.C. App. 238, 684 S.E.2d 444 (2009); Greyhound Lines, Inc. v. Board of Equalization for City of Fort Worth, 419 S.W.2d 345 (Tex. 1967).
- ² In re Appeal of SAS Institute Inc. from a decision of Wake County Bd. of Com’rs for 2006, 200 N.C. App. 238, 684 S.E.2d 444 (2009); Town of Cady v. Alexander Const. Co., 12 Wis. 2d 236, 107 N.W.2d 267 (1961).
- ³ In re Appeal of SAS Institute Inc. from a decision of Wake County Bd. of Com’rs for 2006, 200 N.C. App. 238, 684 S.E.2d 444 (2009).
- ⁴ Griggsby Const. Co. v. Freeman, 108 La. 435, 32 So. 399 (1902); In re Appeal of SAS Institute Inc. from a decision of Wake County Bd. of Com’rs for 2006, 200 N.C. App. 238, 684 S.E.2d 444 (2009).
- ⁵ In re Appeal of SAS Institute Inc. from a decision of Wake County Bd. of Com’rs for 2006, 200 N.C. App. 238, 684 S.E.2d 444 (2009).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 561

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

B. Tangible Personalty

§ 561. Property in transit or on way to market

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2215

A.L.R. Library

[Situs of aircraft, rolling stock, and vessels for purposes of property taxation, 3 A.L.R.4th 837](#)

Property in interstate transit through a state acquires no situs for purposes of taxation in the state,¹ and property in a state only as an incident to its transfer to some other state is not taxable in such state.²

Indeed, property detained in transit to accomplish a particular purpose or object of the owner, other than its transportation to its ultimate destination, may be taxed in the state where it is so detained as having a taxable situs there.³ In the case of oil injected into a common carrier pipeline system and remaining in a “tank farm” for a period of six to 72 hours in the taxing county at the time of the tax assessment, is only there on a temporary basis, being continually in transit, where any delay at the tank farm is not attributable to the taxpayer oil companies, but rather is incidental to the transportation of the oil by the common carrier and is necessary for the safe and efficient operation of the pipeline system.⁴ Property brought from another state into a state, for the purpose of subjecting it to a manufacturing process to prepare it for shipping out of the state, might obtain a tax situs within the state where the process occurs.⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

§ 561. Property in transit or on way to market, 72 Am. Jur. 2d State and Local...

- ¹ [Berkshire v. Douglas County Bd. of Equalization](#), 200 Neb. 113, 262 N.W.2d 449 (1978); [County Bd. of Arlington County v. Stull](#), 217 Va. 238, 227 S.E.2d 698 (1976).
- ² [Coe v. Town of Errol](#), 116 U.S. 517, 6 S. Ct. 475, 29 L. Ed. 715 (1886).
- ³ [People v. Bacon](#), 243 Ill. 313, 90 N.E. 686 (1909), [aff'd](#), 227 U.S. 504, 33 S. Ct. 299, 57 L. Ed. 615 (1913).
- ⁴ [Midland Cent. Appraisal Dist. v. BP America Production Co.](#), 282 S.W.3d 215 (Tex. App. Eastland 2009), review denied, (Mar. 12, 2010) and cert. denied, 131 S. Ct. 2097, 179 L. Ed. 2d 891 (2011).
- ⁵ [Standard Oil Co. v. Combs](#), 96 Ind. 179, 1884 WL 5340 (1884).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 562

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax


XXXVIII. Personal Property

B. Tangible Personalty

§ 562. Property to be shipped into or out of state

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2214, 2215

The jurisdiction of a state over tangible personal property with an actual situs in the state is not terminated by the intended shipment of it out of the state until such property actually starts on its continuous journey¹ or at least is irrevocably delivered to a common carrier for through transportation and is thereby dissociated from the general mass of property in the state.²

Yet, if it is actually started on its continuous journey, it is not taxable in the state although the transit is interrupted by lack of transportation facilities or other causes not connected with the owner's purposes.³ Once goods have been placed in transit in interstate commerce, when there is a break in interstate transit, property may come to rest within the state and become subject to the power of the State to impose nondiscriminatory property tax.⁴ The crucial question in determining whether the State may exert its taxing power, when goods that have been placed in transit in interstate commerce come to rest within a state, is whether there is continuity of transit.⁵ When the stoppage of property in interstate commerce is necessary for the safety and convenience of the goods, the continuity of transit is not considered broken so as to subject the goods to state taxation where they have come to rest.⁶ On the other hand, if the stoppage of property in interstate commerce is attributable to the business purpose of the owner, then the continuity of transit is deemed terminated, and the goods are subject to tax in the jurisdiction of the stoppage.⁷ Upon reaching their destination, goods shipped from one state to another cease being in transit, and as they become a part of the general mass of the property in the state, they acquire a taxable situs there although they are awaiting future sale and may later be reshipped out of the state.⁸

The constitutional provision prohibiting the State from taxing property in transit through the state or being sent from a point within the state to a point outside does not prevent a State from taxing articles brought in from another state⁹ or country.¹⁰

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ Coe v. Town of Errol, 116 U.S. 517, 6 S. Ct. 475, 29 L. Ed. 715 (1886); Marathon Ashland Petroleum L.L.C. v. Galveston Cent. Appraisal Dist., 236 S.W.3d 335 (Tex. App. Houston 1st Dist. 2007).
- ² Coe v. Town of Errol, 116 U.S. 517, 6 S. Ct. 475, 29 L. Ed. 715 (1886); State v. Taber Lumber Co., 101 Minn. 186, 112 N.W. 214 (1907).
- ³ People v. Bacon, 243 Ill. 313, 90 N.E. 686 (1909), aff'd, 227 U.S. 504, 33 S. Ct. 299, 57 L. Ed. 615 (1913).
- ⁴ Peoples Gas, Light, and Coke Co. v. Harrison Cent. Appraisal Dist., 270 S.W.3d 208 (Tex. App. Texarkana 2008), review denied, (2 pets.) (Mar. 12, 2010) and cert. denied, 131 S. Ct. 2097, 179 L. Ed. 2d 891 (2011).
- ⁵ Peoples Gas, Light, and Coke Co. v. Harrison Cent. Appraisal Dist., 270 S.W.3d 208 (Tex. App. Texarkana 2008), review denied, (2 pets.) (Mar. 12, 2010) and cert. denied, 131 S. Ct. 2097, 179 L. Ed. 2d 891 (2011).
- ⁶ Peoples Gas, Light, and Coke Co. v. Harrison Cent. Appraisal Dist., 270 S.W.3d 208 (Tex. App. Texarkana 2008), review denied, (2 pets.) (Mar. 12, 2010) and cert. denied, 131 S. Ct. 2097, 179 L. Ed. 2d 891 (2011).
- ⁷ Peoples Gas, Light, and Coke Co. v. Harrison Cent. Appraisal Dist., 270 S.W.3d 208 (Tex. App. Texarkana 2008), review denied, (2 pets.) (Mar. 12, 2010) and cert. denied, 131 S. Ct. 2097, 179 L. Ed. 2d 891 (2011).
- ⁸ Delaware, Lackawanna & W R Co v. Com. of Pennsylvania, 198 U.S. 341, 25 S. Ct. 669, 49 L. Ed. 1077 (1905); Pittsburgh & S. Coal Co. v. Bates, 156 U.S. 577, 15 S. Ct. 415, 39 L. Ed. 538 (1895).
- ⁹ Havill v. Gurley, 382 So. 2d 109 (Fla. 5th DCA 1980); PPG Industries, Inc. v. State Bd. of Tax Com'rs, 706 N.E.2d 611 (Ind. Tax Ct. 1999).
- ¹⁰ Diamond Shamrock Refining and Marketing Co. v. Nueces County Appraisal Dist., 876 S.W.2d 298 (Tex. 1994).

72 Am. Jur. 2d State and Local Taxation § 563

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

B. Tangible Personalty

§ 563. Property situated in another state; power of domicile of owner

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2212

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 241](#) (Petition or application—By state tax commission—To review decision of board of tax appeals—Taxpayer's income followed taxpayer's residency even though derived from sources outside state)

The maxim “mobilia sequuntur personam” is subject to many exceptions as applied to tangible personal property. It does not apply at least as a prima facie rule to tangible personal property even though such property is physically outside the state of the owner's domicile.¹ The domicile of the owner is the taxable situs assigned to tangibles where an actual situs has not been acquired elsewhere.² That state is the situs for purposes of taxation of tangible personal property temporarily in another state but not permanently located there.³ Yet, when tangible personal property is permanently located in a state other than the state of the owner's domicile in such circumstances as to acquire a situs there for purposes of taxation, it is taxable there.⁴ In this situation, the state of the domicile of the owner, which affords no substantial protection to the property, has no jurisdiction to tax such property.⁵ Thus, tangible personal property that has acquired a fixed situs in a state other than that of the domicile of its owner is immune from taxation when considered as a form of riches upon which to base a tax in personam upon its owner.⁶ However, the state of domicile retains jurisdiction to tax tangible personal property that has not acquired an actual situs elsewhere.⁷ If the facts show that property has a taxable situs in more than one state, the domiciliary state may not tax at full value.⁸

To acquire an actual situs in another state so as to limit the exclusive taxing authority of the home state, there must be continuous presence in the other state which thereby supplants the home state and acquires the taxing power over personalty

that has become a permanent part of the foreign state.⁹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ Hawley v. City of Malden, 232 U.S. 1, 34 S. Ct. 201, 58 L. Ed. 477 (1914); Brock & Co. v. Board of Sup'rs of Los Angeles County, 8 Cal. 2d 286, 65 P.2d 791, 110 A.L.R. 700 (1937).
- ² Hawley v. City of Malden, 232 U.S. 1, 34 S. Ct. 201, 58 L. Ed. 477 (1914); Johnson v. Otey, 299 S.W.3d 308 (Mo. Ct. App. S.D. 2009).
- ³ Brock & Co. v. Board of Sup'rs of Los Angeles County, 8 Cal. 2d 286, 65 P.2d 791, 110 A.L.R. 700 (1937); Ainsworth v. Fillmore County, 166 Neb. 779, 90 N.W.2d 360 (1958).
- ⁴ § 558.
- ⁵ Curry v. McCanless, 307 U.S. 357, 59 S. Ct. 900, 83 L. Ed. 1339, 123 A.L.R. 162 (1939); Lawrence v. State Tax Commission of Mississippi, 286 U.S. 276, 52 S. Ct. 556, 76 L. Ed. 1102, 87 A.L.R. 374 (1932).
- ⁶ Delaware, Lackawanna & W R Co v. Com. of Pennsylvania, 198 U.S. 341, 25 S. Ct. 669, 49 L. Ed. 1077 (1905); Miami Coal Co. v. Fox, 203 Ind. 99, 176 N.E. 11, 79 A.L.R. 333 (1931).
- ⁷ Upper Missouri River Corp. v. Board of Review, Woodbury County, 210 N.W.2d 828 (Iowa 1973).
- ⁸ Appraisal Review Bd. of Galveston County, Tex. v. Tex-Air Helicopters, Inc., 970 S.W.2d 530 (Tex. 1998); A/K Service, LLC v. Harris County Appraisal Dist., 2008 WL 4890140 (Tex. App. Houston 1st Dist. 2008).
- ⁹ Johnson v. Otey, 299 S.W.3d 308 (Mo. Ct. App. S.D. 2009).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 564

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax


XXXVIII. Personal Property

B. Tangible Personalty

§ 564. Removal from state of domicile

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2212, 2214

The owner of tangible personal property is under no duty to maintain it permanently in a jurisdiction where it is subject to the taxing power, but he or she may remove it to a nontaxing jurisdiction and escape the imposition of taxes. However, the right of a State to tax personal property of one domiciled there is not taken away by the fact that the owner temporarily removes such property from the state.¹ The operation of the maxim “mobilia sequuntur personam” is nullified for taxation of tangible personal property only to the extent that such property has acquired a factual permanent situs elsewhere.² However, if the removal of tangible personal property to another jurisdiction is intended to be temporary only, it remains taxable at its permanent situs even though the purpose of the removal was tax evasion or tax reduction.³ In short, not until the property acquires an actual situs elsewhere does the domicile lose the right to tax.⁴ Indeed, the domicile retains the power to tax since the property otherwise would escape taxation altogether.⁵ The removal of personalty from the state of its actual permanent situs, if intended to be temporary on the date of the tax assessment, does not defeat its taxation at such situs although subsequent to such date when the purpose is changed so as to render the removal permanent. Such fact may, however, exempt the personalty from taxation at the next taxing date.⁶ When, however, the domiciled owner removes such property from the state, never to return it, it is no longer taxable there even if its stay in a particular foreign state is only temporary.⁷ The fact that such removal from the state is affected with the purpose of evading a personal property tax at the owner's domicile does not, if such removal is permanent, subject such property to taxation in such state.⁸

Where tangible personal property is moved from the owner's domicil to another state to remain there for an indefinite period or for a relatively long time, then the place where the property is physically located is its tax situs.⁹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ Brock & Co. v. Board of Sup'rs of Los Angeles County, 8 Cal. 2d 286, 65 P.2d 791, 110 A.L.R. 700 (1937).
- ² People of State of New York ex rel. New York Cent. & H.R.R. Co. v. Miller, 202 U.S. 584, 26 S. Ct. 714, 50 L. Ed. 1155 (1906); Brock & Co. v. Board of Sup'rs of Los Angeles County, 8 Cal. 2d 286, 65 P.2d 791, 110 A.L.R. 700 (1937).
- ³ Brock & Co. v. Board of Sup'rs of Los Angeles County, 8 Cal. 2d 286, 65 P.2d 791, 110 A.L.R. 700 (1937).
- ⁴ Cream of Wheat Co. v. Grand Forks County, N.D., 253 U.S. 325, 40 S. Ct. 558, 64 L. Ed. 931 (1920); State Bd. of Tax Com'rs of State of Ind. v. Carrier Corp., 266 Ind. 615, 365 N.E.2d 1385 (1977); Johnson v. Otey, 299 S.W.3d 308 (Mo. Ct. App. S.D. 2009).
- ⁵ Johnson v. Otey, 299 S.W.3d 308 (Mo. Ct. App. S.D. 2009).
- ⁶ Brock & Co. v. Board of Sup'rs of Los Angeles County, 8 Cal. 2d 286, 65 P.2d 791, 110 A.L.R. 700 (1937).
- ⁷ Delaware, Lackawanna & W R Co v. Com. of Pennsylvania, 198 U.S. 341, 25 S. Ct. 669, 49 L. Ed. 1077 (1905).
- ⁸ Brock & Co. v. Board of Sup'rs of Los Angeles County, 8 Cal. 2d 286, 65 P.2d 791, 110 A.L.R. 700 (1937).
- ⁹ Ice Capades, Inc. v. County of Los Angeles, 56 Cal. App. 3d 745, 128 Cal. Rptr. 717 (2d Dist. 1976).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation Eight XXXVIII C Refs.

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

C. Intangible Personalty

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2068](#), [2181](#), [2182](#), [2207](#), [2212](#), [2216](#), [2400](#), [2403](#)

A.L.R. Library

A.L.R. Index, Taxes

West's A.L.R. Digest, [Taxation](#)  [2068](#), [2181](#), [2182](#), [2207](#), [2212](#), [2216](#), [2400](#), [2403](#)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 565

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

C. Intangible Personalty

1. In General

§ 565. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2212, 2400, 2403

An adequate constitutional basis for taxing a citizen of a state for the use and enjoyment of rights in intangibles measured by their value is found in the State's control over the citizen at the place of his or her domicile and the citizen's duty to contribute to the support of the state's government.¹ Personal property of an intangible nature, such as credits, bills receivable, bank deposits, bonds, promissory notes, mortgage loans, judgments, and corporate stock, does not admit of an actual location, and as to such property, the maxim "mobilia sequuntur personam" embodies the general principle in relation to situs for the purposes of taxation.² While intangible personal property may under given circumstances acquire a taxable situs in a jurisdiction other than the domicile of the owner,³ as, for example, under the exception regarding the "business" situs,⁴ the general rule is that the situs of intangibles for the purpose of property taxation is at the domicile of the owner⁵ and only there.⁶

The maxim "mobilia sequuntur personam" yields whenever it is necessary for purposes of justice that the actual situs of intangible personalty be examined.⁷

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ Curry v. McCanless, 307 U.S. 357, 59 S. Ct. 900, 83 L. Ed. 1339, 123 A.L.R. 162 (1939); Lawrence v. State Tax Commission of Mississippi, 286 U.S. 276, 52 S. Ct. 556, 76 L. Ed. 1102, 87 A.L.R. 374 (1932).

² Curry v. McCanless, 307 U.S. 357, 59 S. Ct. 900, 83 L. Ed. 1339, 123 A.L.R. 162 (1939); Luther v. Commissioner of Revenue, 588 N.W.2d 502 (Minn. 1999); Van Alen v. Stein, 119 R.I. 347, 376 A.2d 1383 (1977).

³ Johnson Oil Refining Co. v. State ex rel. Templeton, 1935 OK 663, 172 Okla. 552, 46 P.2d 546 (1935).

⁴ § 570.

⁵ Lawrence v. State Tax Commission of Mississippi, 286 U.S. 276, 52 S. Ct. 556, 76 L. Ed. 1102, 87 A.L.R. 374 (1932); Safe Deposit & Trust Co. of Baltimore, Md., v. Commonwealth of Virginia, 280 U.S. 83, 50 S. Ct. 59, 74 L. Ed. 180, 67 A.L.R. 386 (1929).

⁶ Blodgett v. Silberman, 277 U.S. 1, 48 S. Ct. 410, 72 L. Ed. 749 (1928); Goodyear Tire & Rubber Co. v. Tracy, 85 Ohio St. 3d 615, 1999-Ohio-325, 710 N.E.2d 686 (1999).

⁷ De Ganay v. Lederer, 250 U.S. 376, 39 S. Ct. 524, 63 L. Ed. 1042 (1919).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 566

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

C. Intangible Personalty

1. In General

§ 566. Domicile of debtor

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2181, 2182, 2212, 2400

For the purposes of property taxation, and both as a matter of constitutional law and statutory construction, a debt or credit cannot be assigned a situs for property taxation in a particular state or country other than the domicile of the creditor merely because the debtor is domiciled or resides there.¹ Ordinarily, for taxation purposes, debts can have no locality severed from the person to whom they are due.² Applying this rule, it is held that a citizen cannot be taxed on corporate bonds in a county where he or she does not reside although that is the location of the corporation.³ However, the jurisdiction of the state of his or her domicile over the creditor's person does not exclude the power of another state where he or she transacts business to tax him or her on the credits that accrue to the creditor against resident debtors and thus to enforce contribution for the support of the government under whose protection his or her affairs are conducted.⁴

Intangibles can be taxed by states other than the domicile of the owner where there have been sufficient contacts with the jurisdiction to make it fair and reasonable that the tax be paid.⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Commonwealth of Virginia v. Imperial Coal Sales Co.](#), 293 U.S. 15, 55 S. Ct. 12, 79 L. Ed. 171 (1934); [Davis v. Penn Mut. Life Ins. Co.](#), 198 Ga. 550, 32 S.E.2d 180, 160 A.L.R. 778 (1944).

² [State v. Clement Nat. Bank](#), 84 Vt. 167, 78 A. 944 (1911), [aff'd](#), 231 U.S. 120, 34 S. Ct. 31, 58 L. Ed. 147 (1913).

³ [South Nashville St. R. Co. v. Morrow](#), 87 Tenn. 406, 11 S.W. 348 (1889).

⁴ Liverpool & London & Globe Ins. Co. of New York v. Board of Assessors for Parish of Orleans, 221 U.S. 346, 31 S. Ct. 550, 55 L. Ed. 762 (1911).

⁵ Matter of Heftel Broadcasting Honolulu, Inc., 57 Haw. 175, 554 P.2d 242 (1976).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 567

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

C. Intangible Personalalty

1. In General

§ 567. Place where securities are kept

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2182, 2207, 2212, 2400

A State where securities evidencing an indebtedness or other intangible interest are located may not tax the property interest represented merely upon the basis of the presence of the securities, nor may it exclude the right to tax by the State of the owner's domicile.¹ The power of the domicile of the owner to tax intangible personal property is recognized irrespective of where the evidences thereof are found.² Thus, for the purposes of taxation of promissory notes and similar instruments for the payment of money, where the "debt is inseparable from the paper that declares and constitutes it," the situs is the place where it is actually and physically held.³

The physical location of the paper may be of more or less importance in connection with other circumstances in determining whether the credits represented thereby had a local or business situs apart from the domicile of the creditor.⁴ It is the fact of the use in business there, and not merely the physical presence of the paper, that gives the credits their local situs.⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Great Southern Life Ins. Co. v. City of Austin](#), 112 Tex. 1, 243 S.W. 778 (1922).

² [State ex rel. American Cent. Ins. Co. v. Gehner](#), 320 Mo. 901, 9 S.W.2d 621, 59 A.L.R. 1041 (1928).

³ [People ex rel. Edward & John Burke v. Wells](#), 184 N.Y. 275, 77 N.E. 19 (1906), *aff'd*, 208 U.S. 14, 28 S. Ct. 193, 52 L. Ed. 370 (1908).

⁴ § 574.

⁵ *Selliger v. Commonwealth of Kentucky*, 213 U.S. 200, 29 S. Ct. 449, 53 L. Ed. 761 (1909).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 568

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

C. Intangible Personalty

1. In General

§ 568. What is considered intangible property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2182, 2207, 2212, 2400

Intangible property refers to rights not related to physical things—rights that are but relationships between persons, natural or corporate, which the law recognizes by attaching to them certain sanctions enforceable in courts.¹ Money is considered tangible property for the purposes of taxation and may be taxed where it is kept, whether it belongs to a resident or to a nonresident,² although bank deposits, at least general deposits creating merely the relationship of debtor and creditor between bank and depositor, constitute intangible rather than tangible property.³ Public securities, such as state bonds and municipal bonds and circulating notes of banking institutions, likewise are often considered for taxation purposes as tangible property or at least to be of such nature as to have a situs apart from the domicile of their owner.⁴ Promissory notes, other forms of negotiable instruments, and corporate bonds that evidence an indebtedness are not regarded as property with a situs distinct from that of the domicile of the owner⁵ though they may acquire a business situs arising in connection with their use in the business of a nonresident.⁶

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Curry v. McCannless](#), 307 U.S. 357, 59 S. Ct. 900, 83 L. Ed. 1339, 123 A.L.R. 162 (1939).

² [Great Southern Life Ins. Co. v. City of Austin](#), 112 Tex. 1, 243 S.W. 778 (1922).

³ [§ 583](#).

⁴ [In re State Tax on Foreign-Held Bonds](#), 82 U.S. 300, 21 L. Ed. 179, 1872 WL 15392 (1872); [Great Southern Life Ins.](#)

Co. v. City of Austin, 112 Tex. 1, 243 S.W. 778 (1922).

⁵ § 577.

⁶ § 570.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 569

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

C. Intangible Personalty

1. In General

§ 569. Taxation by different states

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2212](#), [2216](#), [2400](#)

The mere fact that the State where intangible property of a nonresident owner has acquired a local situs exercises its right to tax such property does not preclude the State of the owner's domicile from taxing the same property.¹ Indeed, there is no rule of immunity from taxation of intangibles by more than one state.² The State of the owner's domicile cannot be deprived, due to the owner's activities elsewhere, of its constitutional jurisdiction to tax intangibles having an actual situs there. Very different considerations, both theoretical and practical, apply to the taxation of intangibles than apply to the taxation of tangibles.³ There is no necessary constitutional objection to the taxation of intangible interests by different states⁴ nor any constitutional requirement that necessitates the establishment of a single situs for taxation of intangibles. The 14th Amendment does not require the fixing of a single exclusive place for the taxation of intangibles.⁵

Where there are different interests for the same property, each State may impose a tax on the property; the fact that the same property is taxed concurrently in two or more jurisdictions for the different interests does not render the tax violative of the Constitution's Due Process Clause.⁶

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Fidelity & Columbia Trust Co. v. City of Louisville](#), 245 U.S. 54, 38 S. Ct. 40, 62 L. Ed. 145 (1917); [Stone v. Stapling Machines Co.](#), 221 Miss. 555, 73 So. 2d 123 (1954).

² [Estate of Stuart v. State ex rel. Oklahoma Tax Com'n](#), 2008 OK CIV APP 85, 195 P.3d 1280 (Div. 2 2008).

³ Curry v. McCanless, 307 U.S. 357, 59 S. Ct. 900, 83 L. Ed. 1339, 123 A.L.R. 162 (1939).

⁴ Curry v. McCanless, 307 U.S. 357, 59 S. Ct. 900, 83 L. Ed. 1339, 123 A.L.R. 162 (1939); Blodgett v. Silberman, 277 U.S. 1, 48 S. Ct. 410, 72 L. Ed. 749 (1928).

⁵ Curry v. McCanless, 307 U.S. 357, 59 S. Ct. 900, 83 L. Ed. 1339, 123 A.L.R. 162 (1939).

⁶ Graves v. Elliott, 307 U.S. 383, 59 S. Ct. 913, 83 L. Ed. 1356 (1939).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 570

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

C. Intangible Personalty

2. “Business Situs” of Intangibles

§ 570. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West’s Key Number Digest

West’s Key Number Digest, [Taxation](#)  2068, 2212, 2400

A.L.R. Library

[Property tax: business situs of intangibles held in trust in state other than beneficiary domicil, 59 A.L.R.3d 837](#)

Intangible property is normally taxable at the legal domicile of the owner which, in the case of a corporation, is the state of incorporation.¹ While “mobilia sequuntur personam” embodies a fundamental principle, there may be a business situs in a state other than the domicile of the owner or creditor in the case of intangibles used in that other state in the local business of a nonresident owner. That situs will enable that State to exact a property tax measured by the value of the intangibles used there.² Thus, where the business of the corporation is actually managed and functioning in a state other than the state of incorporation, a “commercial domicile” exists in the state where the corporation’s principal place of business is, and the corporation’s intangibles may be taxed there.³ The rule is justified upon the theory that taxes are paid by the property owner as equivalent for the protection of the property by the government.⁴ Another forcible argument for the taxation by the state of intangible property situated therein and belonging to nonresidents is that otherwise, a foreign corporation, by establishing a business situs in the state, would have a special privilege over other businesses of like nature located and doing business within the state.⁵

The taxation of intangible property of a nonresident so used as to become an integral part of some local business conducted by the nonresident or nonresident’s agent is not violative of the Due Process Clause of the 14th Amendment to the Federal

Constitution or of similar due process clauses of state constitutions⁶ even though this may result in double taxation because the state of domicile of the owner may also exact a tax for such property.⁷

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ Secretary, Dept. of Revenue, State of La. v. GAP (Apparel), Inc., 886 So. 2d 459 (La. Ct. App. 1st Cir. 2004).
- ² Newark Fire Ins. Co. v. State Bd. of Tax Appeals, 307 U.S. 313, 307 U.S. 616, 59 S. Ct. 918, 83 L. Ed. 1312 (1939); First Bank Stock Corp. v. State of Minnesota, 301 U.S. 234, 57 S. Ct. 677, 81 L. Ed. 1061, 113 A.L.R. 228 (1937); Miller v. McColgan, 17 Cal. 2d 432, 110 P.2d 419, 134 A.L.R. 1424 (1941).
- ³ Secretary, Dept. of Revenue, State of La. v. GAP (Apparel), Inc., 886 So. 2d 459 (La. Ct. App. 1st Cir. 2004).
- ⁴ Curry v. McCanless, 307 U.S. 357, 59 S. Ct. 900, 83 L. Ed. 1339, 123 A.L.R. 162 (1939); First Bank Stock Corp. v. State of Minnesota, 301 U.S. 234, 57 S. Ct. 677, 81 L. Ed. 1061, 113 A.L.R. 228 (1937).
- ⁵ Smith v. Lummus, 149 Fla. 660, 6 So. 2d 625 (1942).
- ⁶ Liverpool & London & Globe Ins. Co. of New York v. Board of Assessors for Parish of Orleans, 221 U.S. 346, 31 S. Ct. 550, 55 L. Ed. 762 (1911); Suttles v. Northwestern Mut. Life Ins. Co., 193 Ga. 495, 19 S.E.2d 396, 143 A.L.R. 343 (1942), opinion supplemented, 193 Ga. 495, 21 S.E.2d 695, 143 A.L.R. 343 (1942).
- ⁷ § 576.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 571

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

C. Intangible Personalty

2. “Business Situs” of Intangibles

§ 571. Essential elements

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West’s Key Number Digest

West’s Key Number Digest, [Taxation](#)  2212, 2400

The existence of a business situs of intangibles depends on different combinations of facts.¹ The doctrine is sometimes formulated so as to limit its application to cases where the possession and control of the property right have been localized in some independent business or investment away from the owner’s domicile so that its substantial use and value primarily attach to and become an asset of the outside business.² A business situs would seem to mean a situs in a place other than the domicile of the owner where such owner through an agent, manager, or the like is conducting a business out of which credits or open accounts grow and are used as a part of the business of the agency.³ The principle of business situs is, however, inapplicable if there is not a substantial connection of intangibles with some business of their nonresident owners within the state.⁴ The establishment of a business situs cannot be evaded by simply limiting the authority of the local agent.⁵

It frequently happens that a business situs of intangibles belonging to nonresidents is found to exist in the state where the debtor was domiciled.⁶ The domicile of the debtor is a factor,⁷ but it is not the domicile of the debtor that establishes the situs of the credit for tax purposes.⁸ The control adequate to confer jurisdiction to tax intangible credits may be found in the sovereignty of the debtor’s domicile, but the debt is not property in the hands of the debtor, and the mere fact that the debtor resides within the state, without more, does not confer jurisdiction to tax.⁹ Moneys and securities of a nonresident retained or used in business in another state may have a local situs for taxation irrespective of the debtor’s domicil.¹⁰

The taxability of intangibles of a nonresident, as property within the territorial jurisdiction of a State, may be affected by the mere presence of tangible personalty related to such intangibles within the state.¹¹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ Suttles v. Northwestern Mut. Life Ins. Co., 193 Ga. 495, 19 S.E.2d 396, 143 A.L.R. 343 (1942), opinion supplemented, 193 Ga. 495, 21 S.E.2d 695, 143 A.L.R. 343 (1942); Kentucky Dept. of Revenue v. Bomar, 486 S.W.2d 532, 59 A.L.R.3d 830 (Ky. 1972).
- ² Kentucky Dept. of Revenue v. Bomar, 486 S.W.2d 532, 59 A.L.R.3d 830 (Ky. 1972).
- ³ Kentucky Dept. of Revenue v. Bomar, 486 S.W.2d 532, 59 A.L.R.3d 830 (Ky. 1972).
- ⁴ Kentucky Dept. of Revenue v. Bomar, 486 S.W.2d 532, 59 A.L.R.3d 830 (Ky. 1972).
- ⁵ Suttles v. Northwestern Mut. Life Ins. Co., 193 Ga. 495, 19 S.E.2d 396, 143 A.L.R. 343 (1942), opinion supplemented, 193 Ga. 495, 21 S.E.2d 695, 143 A.L.R. 343 (1942).
- ⁶ Buck v. Miller, 147 Ind. 586, 45 N.E. 647 (1896).
- ⁷ Southern Pine Ass'n v. Board of Assessors of Parish of Orleans, 155 La. 1085, 99 So. 884 (1924).
- ⁸ § 566.
- ⁹ Commonwealth of Virginia v. Imperial Coal Sales Co., 293 U.S. 15, 55 S. Ct. 12, 79 L. Ed. 171 (1934); Suttles v. Northwestern Mut. Life Ins. Co., 193 Ga. 495, 19 S.E.2d 396, 143 A.L.R. 343 (1942), opinion supplemented, 193 Ga. 495, 21 S.E.2d 695, 143 A.L.R. 343 (1942).
- ¹⁰ Buck v. Miller, 147 Ind. 586, 45 N.E. 647 (1896).
- ¹¹ Parke, Davis & Co. v. City of Atlanta, 200 Ga. 296, 36 S.E.2d 773, 163 A.L.R. 976 (1946).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 572

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

C. Intangible Personalty

2. “Business Situs” of Intangibles

§ 572. Theory of localization or integration

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West’s Key Number Digest

West’s Key Number Digest, [Taxation](#)  2212, 2216, 2400

A test for the legal existence of a business situs of intangible property, for the purposes of property taxation in a state other than the domicile of the owner, is the concept of “localization” of the intangibles and their “integration” with local business in the state.¹ If the intangible property is used in another state in such a way as to become an integral part of a business carried on within the state, the intangible property acquires a business situs in that state and is subject to taxation in that state.² Thus, instead of holding one particular outstanding fact as an indispensable condition of such situs, it is necessary under the integration doctrine that the intangibles become an integral part of some business activity. Their possession and control must be localized in an independent business or investment away from the owner’s domicile so that their substantial use and value become assets of the outside business.³ Courts usually recognize a business situs of intangibles only where the credits of a nonresident owner are in the possession and control of an independent local agent. That agent must hold them in order to transact a permanent business and to invest the proceeds from the principal or interest so that the property comes in competition with the capital of the citizens of the agent’s state of residence.⁴ To overcome the presumption of domiciliary location, the proof of business situs must connect the intangibles as an integral part of the local activity.⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [United Gas Corp. v. Fontenot](#), 241 La. 488, 129 So. 2d 748 (1961).

² [Secretary, Dept. of Revenue, State of La. v. GAP \(Apparel\), Inc.](#), 886 So. 2d 459 (La. Ct. App. 1st Cir. 2004).

³ [Newark Fire Ins. Co. v. State Bd. of Tax Appeals](#), 307 U.S. 313, 307 U.S. 616, 59 S. Ct. 918, 83 L. Ed. 1312 (1939);

First Bank Stock Corp. v. State of Minnesota, 301 U.S. 234, 57 S. Ct. 677, 81 L. Ed. 1061, 113 A.L.R. 228 (1937);
Suttles v. Northwestern Mut. Life Ins. Co., 193 Ga. 495, 19 S.E.2d 396, 143 A.L.R. 343 (1942), opinion
supplemented, 193 Ga. 495, 21 S.E.2d 695, 143 A.L.R. 343 (1942).

⁴ Newark Fire Ins. Co. v. State Bd. of Tax Appeals, 307 U.S. 313, 307 U.S. 616, 59 S. Ct. 918, 83 L. Ed. 1312 (1939).

⁵ Newark Fire Ins. Co. v. State Bd. of Tax Appeals, 307 U.S. 313, 307 U.S. 616, 59 S. Ct. 918, 83 L. Ed. 1312 (1939).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government
Works.

72 Am. Jur. 2d State and Local Taxation § 573

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

C. Intangible Personalty

2. “Business Situs” of Intangibles

§ 573. Continuity and permanency of situs; authority to collect

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West’s Key Number Digest

West’s Key Number Digest, [Taxation](#)  2068, 2212, 2400

A continuous or permanent business in the state, as distinct from a temporary business or isolated transaction involving credits of a nonresident, appears to be an indispensable condition to the taxation by the state of such credits on the theory of their having a business situs in such state. The cases that have been decided based on the existence of a business situs apart from the domicile of the owner recognize this.¹ The term “business situs” does not cover merely transitory presence in a state of intangibles of a nonresident for merely temporary or isolated transactions, and the mere custody of evidences of credits of a nonresident in the state for safekeeping, or their custody in the state by one acting in a clerical capacity, is insufficient.² There must be some business use of the property or some power of managing, controlling, or dealing with it in a business way.³ Mere authority of a local agent to collect the debts and remit the proceeds to the nonresident owner does not give such credits a business situs in the state of the agent’s residence. They are not subject to property taxation in that state if the agent’s authority is strictly limited to clerical work such as collection and remittance, and it does not include authority to reinvest the proceeds.⁴ In some such cases, however, taxable situs has been deemed to exist.⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Metropolitan Life Ins. Co. v. City of New Orleans](#), 205 U.S. 395, 27 S. Ct. 499, 51 L. Ed. 853 (1907); [State Board of Assessors of Parish of Orleans v. Comptoir National D’Escompte de Paris](#), 191 U.S. 388, 24 S. Ct. 109, 48 L. Ed. 232 (1903); [Manufacturers Trust Co. v. Hackett](#), 118 Conn. 101, 170 A. 792 (1934).

² [Crane Co. v. City Council of Des Moines](#), 208 Iowa 164, 225 N.W. 344, 76 A.L.R. 801 (1929).

³ Board of Com'rs of Johnson County v. Hewitt, 76 Kan. 816, 93 P. 181 (1907).

⁴ Crane Co. v. City Council of Des Moines, 208 Iowa 164, 225 N.W. 344, 76 A.L.R. 801 (1929).

⁵ City of New Orleans v. Stemple, 175 U.S. 309, 20 S. Ct. 110, 44 L. Ed. 174 (1899).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 574

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

C. Intangible Personalty

2. “Business Situs” of Intangibles

§ 574. Presence of evidences of debt

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West’s Key Number Digest

West’s Key Number Digest, [Taxation](#)  2068, 2182, 2207, 2212, 2400

The mere presence in the state of the evidences of credits is insufficient to give such credits a business situs in the state for the purposes of taxation,¹ although the physical whereabouts of such evidences of debt are frequently mentioned as a factor to be considered along with other factors,² and some of the state tax statutes require the presence in the state of the evidences of debt of a nonresident to make them taxable.³ While the physical presence within the state of the evidences of debts is embodied in many statements of the rule in relation to a business situs, the physical presence of the evidences of indebtedness owed by nonresidents is not a jurisdictional prerequisite to their taxation.⁴ It makes no difference, in other words, that at his or her domicile, the principal keeps the notes and other evidences of credits until they are needed by the agent to enforce payment on them.⁵

Observation:

A check qualifies as “evidence of debt” within the meaning of one state tax statute’s definition of intangible personal property, making the check, under the state statute, subject to state but not municipal tax.⁶

Footnotes

- ¹ Buck v. Beach, 206 U.S. 392, 27 S. Ct. 712, 51 L. Ed. 1106 (1907).
- ² State v. Packard, 40 N.D. 182, 168 N.W. 673 (1918).
- ³ O'Dell v. Industrial Acceptance Corp., 1929 OK 560, 141 Okla. 174, 284 P. 1 (1929).
- ⁴ Orient Ins. Co. v. Board of Assessors for Parish of Orleans, 221 U.S. 358, 31 S. Ct. 554, 55 L. Ed. 769 (1911).
- ⁵ Metropolitan Life Ins. Co. v. City of New Orleans, 205 U.S. 395, 27 S. Ct. 499, 51 L. Ed. 853 (1907); Bristol v. Washington County, 177 U.S. 133, 20 S. Ct. 585, 44 L. Ed. 701 (1900); Clay, Robinson & Co. v. Douglas County, 88 Neb. 363, 129 N.W. 548 (1911).
- ⁶ In re Ricketts Const. Co., Inc., 441 B.R. 512 (Bankr. W.D. Va. 2010) (applying Virginia law).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 575

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

C. Intangible Personalty

2. "Business Situs" of Intangibles

§ 575. Necessity for and extent of authority of local agent or officer

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2212, 2400

The extent of the authority of the local agent appears to be, together with the conduct of a continuous or permanent business, the most important factor in determining whether the credits of the nonresident have acquired a business situs in the state for the purpose of taxation. It plays an equally important role in determining whether the credits have become localized in the state to such a degree as to have a taxable business situs there.¹ Where the local agent's authority is limited to mere clerical or ministerial functions without any amount of discretion, the agency is insufficient in any event to give the credits a business situs in the state of the agent's residence even if the business conducted by the agent extends over a period of many years.² The exercise of independent judgment and discretion by the agent in the conduct of the principal's affairs and his or her power to invest and reinvest, or loan and reloan, the proceeds of the credits appear to be necessary features for the creation of a taxable business situs at the place of his or her residence.³ The mere quantum of authority given to an agent is no controlling factor, and a very limited discretionary power of the agent will suffice, under certain circumstances, to create a business situs for intangibles in the state of the agent's residence for purpose of property taxation.⁴ On the other hand, the mere power of control, if not actually exercised, is insufficient to create a business situs in the state of the agent's residence of intangibles, the evidences of which were kept outside the state.⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ State ex rel. American Automobile Ins. Co. v. Gehner, 320 Mo. 702, 8 S.W.2d 1057, 59 A.L.R. 1026 (1928).

² Smith v. Lummus, 149 Fla. 660, 6 So. 2d 625 (1942).

- ³ Tax Commission v. Kelly-Springfield Tire Co., 38 Ohio App. 109, 9 Ohio L. Abs. 558, 175 N.E. 700 (8th Dist. Cuyahoga County 1931).
- ⁴ Suttles v. Northwestern Mut. Life Ins. Co., 193 Ga. 495, 19 S.E.2d 396, 143 A.L.R. 343 (1942), opinion supplemented, 193 Ga. 495, 21 S.E.2d 695, 143 A.L.R. 343 (1942).
- ⁵ Chestnut Securities Co. v. Oklahoma Tax Com'n, 1935 OK 196, 173 Okla. 369, 48 P.2d 817 (1935).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 576

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

C. Intangible Personalty

2. “Business Situs” of Intangibles

§ 576. Taxation at domicile of owner and at business situs

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West’s Key Number Digest

West’s Key Number Digest, [Taxation](#)  2212, 2400

Courts tend to recognize the exclusive taxing power of the State where intangible property has acquired a business situs, with the result of denying to the state of domicile the power to tax if it is different from the business situs. If the terms of the statute are not explicit, but are susceptible of construction on the point, a construction is given that subjects the property to single taxation.¹ The rule applicable is that “if there is any doubt whether the language of an act was intended to authorize the taxation of certain property, the language will not be extended beyond its clear import in order to make the property subject to the tax.”² Such statutes must be construed, if possible, to not violate a constitutional provision.³ However, the lack of power of a state of domicile of an owner to tax tangibles permanently located outside the state, and the exclusive character of such power in the state of the actual situs of such property,⁴ has never been given more than a limited application to intangibles having a separate business situs.⁵ No constitutional objection exists to the taxation of intangibles both by the owner’s state of domicile and by the state where such property has a business situs.⁶

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Miami Coal Co. v. Fox](#), 203 Ind. 99, 176 N.E. 11, 79 A.L.R. 333 (1931).

² [Parker v. Strauss](#), 49 La. Ann. 1173, 22 So. 329 (1897).

³ [Suttles v. Northwestern Mut. Life Ins. Co.](#), 193 Ga. 495, 19 S.E.2d 396, 143 A.L.R. 343 (1942), opinion supplemented, 193 Ga. 495, 21 S.E.2d 695, 143 A.L.R. 343 (1942).

⁴ § 563.

⁵ *Curry v. McCanless*, 307 U.S. 357, 59 S. Ct. 900, 83 L. Ed. 1339, 123 A.L.R. 162 (1939).

⁶ *Curry v. McCanless*, 307 U.S. 357, 59 S. Ct. 900, 83 L. Ed. 1339, 123 A.L.R. 162 (1939); *Suttles v. Northwestern Mut. Life Ins. Co.*, 193 Ga. 495, 19 S.E.2d 396, 143 A.L.R. 343 (1942), *opinion supplemented*, 193 Ga. 495, 21 S.E.2d 695, 143 A.L.R. 343 (1942).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation Eight XXXVIII D Refs.

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax


XXXVIII. Personal Property

D. Particular Kinds and Classes

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2068, 2183, 2198, 2202 to 2204, 2208 to 2210, 2212, 2213, 2227, 2232, 2238, 2254, 2255, 2400, 2402, 2403, 3321(1), 3321(2)

A.L.R. Library

A.L.R. Index, Taxes

West's A.L.R. Digest, [Taxation](#)  2068, 2183, 2198, 2202 to 2204, 2208 to 2210, 2212, 2213, 2227, 2232, 2238, 2254, 2255, 2400, 2402, 2403, 3321(1), 3321(2)

Forms

[Am. Jur. Pleading and Practice Forms, Inheritance, Estate, and Gift Taxes § 29](#)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 59, 69](#)

72 Am. Jur. 2d State and Local Taxation § 577

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

D. Particular Kinds and Classes

1. In General

§ 577. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2212, 2400

A.L.R. Library

[Property tax: business situs of intangibles held in trust in state other than beneficiary domicil, 59 A.L.R.3d 837](#)

Under ordinary conditions, a debt is a species of intangible personal property that is taxable in the state of the domicile or residence of the owner—the creditor—and nowhere else.¹ The maxim “mobilia sequuntur personam” is applied to debts and credits; thus, the domicile of the creditor-owner is the situs thereof for taxation purposes.² This principle applies to corporations, as well as to natural persons.³

Debts evidenced by promissory notes and other negotiable instruments follow the domicile of the owner or creditor and are taxable there⁴ and generally are regarded as having no situs independent of the domicile of the owner.⁵ The domicile of the owner is likewise the situs for taxation purposes of corporate bonds.⁶ A debt is nonetheless property of an intangible nature and taxable at the domicile of the creditor merely because its amount and maturity are set forth in a bond even if the bond is kept or deposited in another state. The bond is only evidence of the debt and not the debt itself.⁷ The fact that the bond is registered does not change the rule.⁸ The rule applies also to interest due on bonds or notes.⁹ Debts evidenced by notes, bonds, mortgages, and other forms of securities may, however, acquire a situs at a place other than the domicile of the owner, and be there reached by the taxing authority, on the theory that they receive protection of the local laws and authority,¹⁰ as where they are retained or kept in another state in connection with a business conducted by the nonresident there, either in person or

through agents and representatives.¹¹ However, it must appear that there was in fact a business situs in the State seeking to subject such property to taxation¹² under the general rules stated above governing the determination of business situs of intangibles.

All classes of choses in action, in the absence of statutory provisions to the contrary, follow the person of the creditor and are subject to be taxed at his or her domicile.¹³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ Commonwealth of Virginia v. Imperial Coal Sales Co., 293 U.S. 15, 55 S. Ct. 12, 79 L. Ed. 171 (1934); Beidler v. South Carolina Tax Commission, 282 U.S. 1, 51 S. Ct. 54, 75 L. Ed. 131 (1930).
- ² Curry v. McCannless, 307 U.S. 357, 59 S. Ct. 900, 83 L. Ed. 1339, 123 A.L.R. 162 (1939); Buck v. Beach, 206 U.S. 392, 27 S. Ct. 712, 51 L. Ed. 1106 (1907); Croop v. Walton, 199 Ind. 262, 157 N.E. 275, 53 A.L.R. 1386 (1927).
- ³ State v. Clement Nat. Bank, 84 Vt. 167, 78 A. 944 (1911), *aff'd*, 231 U.S. 120, 34 S. Ct. 31, 58 L. Ed. 147 (1913).
- ⁴ Buck v. Beach, 206 U.S. 392, 27 S. Ct. 712, 51 L. Ed. 1106 (1907); Great Southern Life Ins. Co. v. City of Austin, 112 Tex. 1, 243 S.W. 778 (1922).
- ⁵ In re State Tax on Foreign-Held Bonds, 82 U.S. 300, 21 L. Ed. 179, 1872 WL 15392 (1872); Commonwealth v. Williams' Ex'r, 102 Va. 778, 47 S.E. 867 (1904).
- ⁶ Pittsburgh, F.W. & C.R. Co. v. Commonwealth, 82 U.S. 326, 21 L. Ed. 189 (1872), *note*; Northern Cent. R. Co. v. Jackson, 74 U.S. 262, 19 L. Ed. 88, 1868 WL 11132 (1868); State ex rel. American Cent. Ins. Co. v. Gehner, 320 Mo. 901, 9 S.W.2d 621, 59 A.L.R. 1041 (1928).
- ⁷ Kirtland v. Hotchkiss, 100 U.S. 491, 25 L. Ed. 558, 1879 WL 16552 (1879).
- ⁸ Bonaparte v. Appeal Tax Court of Baltimore, 104 U.S. 592, 26 L. Ed. 845, 1881 WL 19866 (1881).
- ⁹ State ex rel. American Automobile Ins. Co. v. Gehner, 320 Mo. 702, 8 S.W.2d 1057, 59 A.L.R. 1026 (1928).
- ¹⁰ De Ganay v. Lederer, 250 U.S. 376, 39 S. Ct. 524, 63 L. Ed. 1042 (1919); Metropolitan Life Ins. Co. v. City of New Orleans, 205 U.S. 395, 27 S. Ct. 499, 51 L. Ed. 853 (1907).
- ¹¹ State of Iowa v. Slimmer, 248 U.S. 115, 39 S. Ct. 33, 63 L. Ed. 158 (1918); Great Southern Life Ins. Co. v. City of Austin, 112 Tex. 1, 243 S.W. 778 (1922).
- ¹² W.W. Kimball Co. v. Board of Com'rs of Shawnee County, 99 Kan. 302, 161 P. 644 (1916).
- ¹³ Miami Coal Co. v. Fox, 203 Ind. 99, 176 N.E. 11, 79 A.L.R. 333 (1931).

72 Am. Jur. 2d State and Local Taxation § 578

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

D. Particular Kinds and Classes

1. In General

§ 578. Corporate property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2212, 2227, 2232, 2400

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 59](#) (Affidavit—By corporate officer—For refund of personal property taxes paid by corporation)

The situs of the property of corporations for purposes of taxation is, between different states, determined by the same rules that determine the situs of the property of individuals.¹ In determining the taxable situs of personal property, the domicile of the owner is of paramount importance. The principle that, in accordance with the rule generally as to the domicile of a corporation,² such an organization is to be regarded as domiciled for tax purposes in the state of its incorporation³ is accordingly fundamental. Thus, the State of a corporation's organization has jurisdiction to tax its personal property, tangible or intangible, which has not acquired an actual situs elsewhere,⁴ and this is true notwithstanding the temporary physical presence of such property in another state.⁵ A corporation may be taxed upon its intangible property in the state of its organization⁶ at least in the absence of circumstances identifying such property with some other place as its business situs.⁷ It cannot, however, be taxed upon its tangible personal property permanently located in another state as a matter either of constitutional principle⁸ or of proper statutory construction.⁹ In this connection, a state may not effect the taxation of tangible personalty of a domestic corporation permanently located outside its borders by taxing the enhanced value of the capital stock¹⁰ or other intangible assets¹¹ of the concern arising from the value of property located beyond the State's jurisdiction.

A corporation may not escape the payment of taxes on personal or tangible property located within a state by maintaining a

nonresident home office and thereby creating the fiction of a nonresident tax status for such property.¹²

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ Tax Commission v. Kelly-Springfield Tire Co., 38 Ohio App. 109, 9 Ohio L. Abs. 558, 175 N.E. 700 (8th Dist. Cuyahoga County 1931); Standard Paving Co. v. County Bd. of Equalization of Beckham County, 1928 OK 768, 135 Okla. 15, 273 P. 201 (1928).
- ² Am. Jur. 2d, Corporations § 256.
- ³ First Bank Stock Corp. v. State of Minnesota, 301 U.S. 234, 57 S. Ct. 677, 81 L. Ed. 1061, 113 A.L.R. 228 (1937); Johnson Oil Refining Co. v. State of Oklahoma ex rel. Mitchell, 290 U.S. 158, 54 S. Ct. 152, 78 L. Ed. 238 (1933).
- ⁴ Johnson Oil Refining Co. v. State of Oklahoma ex rel. Mitchell, 290 U.S. 158, 54 S. Ct. 152, 78 L. Ed. 238 (1933); Cream of Wheat Co. v. Grand Forks County, N.D., 253 U.S. 325, 40 S. Ct. 558, 64 L. Ed. 931 (1920).
- ⁵ Cream of Wheat Co. v. Grand Forks County, N.D., 253 U.S. 325, 40 S. Ct. 558, 64 L. Ed. 931 (1920); People of State of New York ex rel. New York Cent. & H.R.R. Co. v. Miller, 202 U.S. 584, 26 S. Ct. 714, 50 L. Ed. 1155 (1906).
- ⁶ Newark Fire Ins. Co. v. State Bd. of Tax Appeals, 307 U.S. 313, 307 U.S. 616, 59 S. Ct. 918, 83 L. Ed. 1312 (1939).
- ⁷ First Bank Stock Corp. v. State of Minnesota, 301 U.S. 234, 57 S. Ct. 677, 81 L. Ed. 1061, 113 A.L.R. 228 (1937). As to taxation of intangible property by the state where it has acquired a business situs, as precluding its taxation in the state of the owner's domicile, generally, see § 576.
- ⁸ Johnson Oil Refining Co. v. State of Oklahoma ex rel. Mitchell, 290 U.S. 158, 54 S. Ct. 152, 78 L. Ed. 238 (1933); Union Refrigerator Transit Co. v. Commonwealth of Kentucky, 199 U.S. 194, 26 S. Ct. 36, 50 L. Ed. 150 (1905); Tax Commission v. Kelly-Springfield Tire Co., 38 Ohio App. 109, 9 Ohio L. Abs. 558, 175 N.E. 700 (8th Dist. Cuyahoga County 1931).
- ⁹ Commonwealth v. American Dredging Co., 122 Pa. 386, 15 A. 443 (1888).
- ¹⁰ Delaware, Lackawanna & W R Co v. Com. of Pennsylvania, 198 U.S. 341, 25 S. Ct. 669, 49 L. Ed. 1077 (1905).
- ¹¹ Utah-Idaho Sugar Co. v. Salt Lake County, 60 Utah 491, 210 P. 106, 27 A.L.R. 874 (1922).
- ¹² Parke, Davis & Co. v. Cook, 198 Ga. 457, 31 S.E.2d 728, 156 A.L.R. 1360 (1944).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 579

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

D. Particular Kinds and Classes

1. In General

§ 579. Corporate property—Domicile of corporation within state

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2212, 2227, 2232, 2254, 2255, 2400

The usual statutory provisions on taxation of corporate property state that corporations, whether domestic or foreign, are regarded as residents of the municipality or county of their principal office or place of business. They are prima facie taxable on their personal property in such county or municipality.¹ A corporation has, however, no constitutional right to have its personal property taxed only at its domicile, and the legislature may fix the situs of such property elsewhere within the state provided that its determination is not purely arbitrary or in conflict with some constitutional limitation on its powers.² Under some statutes, the property of a corporation doing business in more than one county is apportioned among those counties. The assessed value of property permanently located in a county other than that of the principal office is deducted from the unit assessment of the corporation's entire property made in the principal office's county.³

The principal office or place of business of a corporation is where the governing power of the corporation is exercised and not where the principal labor of its employees is carried on.⁴ The place of holding the annual stockholders' and directors' meetings is, however, not the principal place of business of a corporation if substantially all of the business for which it was organized is transacted in another place.⁵ Statutes sometimes require that the location of the principal office of a corporation be designated in its charter or certificate of incorporation. Where a corporation so designates its principal place of business, that designation, if fairly made, fixes the situs of its personal property for tax purposes even though the corporation may have several offices where it does business.⁶ Thus, a foreign corporation is domiciled in the state for purposes of personal property taxes where the corporation had been granted a certificate of authority to operate in the state on which it listed its address in the state as its principal place of business.⁷ While there are some jurisdictions that have adopted the rule that such designation by a corporation fixes such situs conclusively,⁸ more typically, it is held not conclusive where, for purposes of evading taxation, a place other than that where the principal business of the organization is carried on is designated.⁹ Indeed, a corporation may acquire a commercial domicile outside the state of its incorporation, for tax purposes, when it does not operate at its legal domicile but maintains in another state its principal business office from which its management

functions.¹⁰ A commercial domicile exists, for tax purposes, where the corporation maintains a “paper domicile” in the state of incorporation such that the sole function performed in the incorporating state is to breathe life into the corporation while the corporation actually functions and is managed from offices maintained in another state.¹¹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ City of Lewiston v. Tri-State Rubbish, Inc., 671 A.2d 955 (Me. 1996).
- ² Columbus Southern Ry. Co. v. Wright, 151 U.S. 470, 14 S. Ct. 396, 38 L. Ed. 238 (1894); Taylor v. Secor, 92 U.S. 575, 23 L. Ed. 663, 1875 WL 17772 (1875).
- ³ Standard Paving Co. v. County Bd. of Equalization of Beckham County, 1928 OK 768, 135 Okla. 15, 273 P. 201 (1928).
- ⁴ Tennessee Coal, Iron & R. Co. v. State, 239 Ala. 19, 193 So. 143 (1939).
- ⁵ Georgia Fire Ins. Co. v. City of Cedartown, 134 Ga. 87, 67 S.E. 410 (1910).
- ⁶ Berkshire v. Douglas County Bd. of Equalization, 200 Neb. 113, 262 N.W.2d 449 (1978).
- ⁷ In re Amusements of Rochester, Inc., 201 N.C. App. 419, 689 S.E.2d 451 (2009), appeal dismissed, review denied, 364 N.C. 325, 700 S.E.2d 745 (2010).
- ⁸ Merchants Nat. Bank of Manchester v. Town of Exeter, 120 N.H. 157, 412 A.2d 1016 (1980).
- ⁹ Alabama Clay Products Co. v. City of Birmingham, 226 Ala. 631, 148 So. 328 (1933).
- ¹⁰ Kevin Associates, L.L.C. v. Crawford, 865 So. 2d 34 (La. 2004).
- ¹¹ Kevin Associates, L.L.C. v. Crawford, 865 So. 2d 34 (La. 2004).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 580

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

D. Particular Kinds and Classes

1. In General

§ 580. Corporate property—Corporations engaged in interstate business

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2212](#), [2227](#), [2232](#), [2400](#)

The Interstate Commerce Clause of the Federal Constitution does not prevent a state or local government from imposing ordinary property taxes upon the property of corporations engaged in interstate commerce, where such property has a taxable situs within the borders of the taxing unit,¹ even though such property is itself used in carrying on the corporation's interstate business.²

A multistate corporation, that is, a corporation having a single corporate existence and a single issue of capital stock but deriving its corporate existence from the laws of several states, has a domicile in each of such states³ and is taxable in each state where it is incorporated only on such property as is located in such state.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Commonwealth of Virginia v. Imperial Coal Sales Co.](#), 293 U.S. 15, 55 S. Ct. 12, 79 L. Ed. 171 (1934); [St. Louis Southwestern Ry. Co. v. State of Arkansas ex rel. Norwood](#), 235 U.S. 350, 35 S. Ct. 99, 59 L. Ed. 265 (1914); [East Coast Freight Lines v. City of Richmond](#), 194 Va. 517, 74 S.E.2d 283 (1953).

² [Johnson Oil Refining Co. v. State of Oklahoma ex rel. Mitchell](#), 290 U.S. 158, 54 S. Ct. 152, 78 L. Ed. 238 (1933); [St. Louis & E. St. L. Electric Ry. Co. v. State of Missouri ex rel. and to Use of Hagerman](#), 256 U.S. 314, 41 S. Ct. 488, 65 L. Ed. 946 (1921); [East Coast Freight Lines v. City of Richmond](#), 194 Va. 517, 74 S.E.2d 283 (1953).

³ [Am. Jur. 2d, Foreign Corporations § 83.](#)

⁴ [Lee v. Sturges, 46 Ohio St. 153, 19 N.E. 560 \(1889\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 581

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

D. Particular Kinds and Classes

1. In General

§ 581. Debts, including those reduced to judgment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2212, 2403

Under ordinary conditions, a debt is a species of intangible personal property that is taxable in the state of the domicile or residence of the owner—the creditor—and nowhere else.¹ The maxim “mobilia sequuntur personam” is applied to debts and credits; thus, the domicile of the creditor-owner is the situs thereof for taxation purposes.² This principle applies to corporations, as well as to natural persons.³

Debts evidenced by promissory notes and other negotiable instruments follow the domicile of the owner or creditor and are taxable there,⁴ and they are generally regarded as having no situs independent of the domicile of the owner.⁵ The domicile of the owner is likewise the situs for taxation purposes of corporate bonds.⁶ A debt is nonetheless property of an intangible nature and taxable at the domicile of the creditor, merely because its amount and maturity are set forth in a bond, even if the bond is kept or deposited in another state. The bond is only evidence of the debt and not the debt itself.⁷ The fact that the bond is registered does not change the rule.⁸ The rule applies also to interest due on bonds or notes.⁹ Debts evidenced by notes, bonds, mortgages, and other forms of securities may, however, acquire a situs at a place other than the domicile of the owner and be there reached by the taxing authority. This is upon the theory that they receive protection of the local laws and authority¹⁰ as where they are retained or kept in another state in connection with a business conducted by the nonresident there either in person or through agents and representatives.¹¹ However, it must appear that there was in fact a business situs in the State seeking to subject such property to taxation¹² under the general rules stated above governing the determination of business situs of intangibles.

All classes of choses in action, in the absence of statutory provisions to the contrary, follow the person of the creditor and are subject to be taxed at his or her domicile.¹³

A debt that for taxation purposes has its situs at the domicile of the creditor does not change its situs by being reduced to

judgment at the domicile of the debtor.¹⁴ Even though there is no valid objection to the taxation of a judgment rendered by courts of a state in favor of a nonresident and remaining unsatisfied, a judgment in favor of a nonresident will not be taxable in the state where it was rendered unless expressly made so by statute.¹⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ Commonwealth of Virginia v. Imperial Coal Sales Co., 293 U.S. 15, 55 S. Ct. 12, 79 L. Ed. 171 (1934); Beidler v. South Carolina Tax Commission, 282 U.S. 1, 51 S. Ct. 54, 75 L. Ed. 131 (1930).
- ² Curry v. McCannless, 307 U.S. 357, 59 S. Ct. 900, 83 L. Ed. 1339, 123 A.L.R. 162 (1939); Buck v. Beach, 206 U.S. 392, 27 S. Ct. 712, 51 L. Ed. 1106 (1907).
- ³ State v. Clement Nat. Bank, 84 Vt. 167, 78 A. 944 (1911), *aff'd*, 231 U.S. 120, 34 S. Ct. 31, 58 L. Ed. 147 (1913).
- ⁴ Buck v. Beach, 206 U.S. 392, 27 S. Ct. 712, 51 L. Ed. 1106 (1907); Great Southern Life Ins. Co. v. City of Austin, 112 Tex. 1, 243 S.W. 778 (1922).
- ⁵ In re State Tax on Foreign-Held Bonds, 82 U.S. 300, 21 L. Ed. 179, 1872 WL 15392 (1872).
- ⁶ Pittsburgh, F.W. & c.R. Co. v. Commonwealth, 82 U.S. 326, 21 L. Ed. 189 (1872), *note*; Northern Cent. R. Co. v. Jackson, 74 U.S. 262, 19 L. Ed. 88, 1868 WL 11132 (1868); State ex rel. American Cent. Ins. Co. v. Gehner, 320 Mo. 901, 9 S.W.2d 621, 59 A.L.R. 1041 (1928).
- ⁷ Kirtland v. Hotchkiss, 100 U.S. 491, 25 L. Ed. 558, 1879 WL 16552 (1879).
- ⁸ Bonaparte v. Appeal Tax Court of Baltimore, 104 U.S. 592, 26 L. Ed. 845, 1881 WL 19866 (1881).
- ⁹ State ex rel. American Automobile Ins. Co. v. Gehner, 320 Mo. 702, 8 S.W.2d 1057, 59 A.L.R. 1026 (1928).
- ¹⁰ De Ganay v. Lederer, 250 U.S. 376, 39 S. Ct. 524, 63 L. Ed. 1042 (1919); Metropolitan Life Ins. Co. v. City of New Orleans, 205 U.S. 395, 27 S. Ct. 499, 51 L. Ed. 853 (1907).
- ¹¹ State of Iowa v. Slimmer, 248 U.S. 115, 39 S. Ct. 33, 63 L. Ed. 158 (1918); Great Southern Life Ins. Co. v. City of Austin, 112 Tex. 1, 243 S.W. 778 (1922).
- ¹² W.W. Kimball Co. v. Board of Com'rs of Shawnee County, 99 Kan. 302, 161 P. 644 (1916).
- ¹³ Miami Coal Co. v. Fox, 203 Ind. 99, 176 N.E. 11, 79 A.L.R. 333 (1931).
- ¹⁴ Kirtland v. Hotchkiss, 100 U.S. 491, 25 L. Ed. 558, 1879 WL 16552 (1879); In re State Tax on Foreign-Held Bonds, 82 U.S. 300, 21 L. Ed. 179, 1872 WL 15392 (1872).
- ¹⁵ Kingman County Com'rs v. Leonard, 57 Kan. 531, 46 P. 960 (1896).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 582

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

D. Particular Kinds and Classes

1. In General

§ 582. Debts secured by mortgage or other lien; interest of mortgagee

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2068, 2183, 2210, 2212, 2403

A debt or credit, for purposes of taxation, is at the domicile of the creditor even if secured by a mortgage or other lien on real estate in another state. It does not lose its situs in the creditor's state merely because of this fact. The power of the other State to tax its residents upon such intangible property is not affected by the existence of the security. The debt secured by the mortgage is taxable. That debt has its situs in the state where the creditor resides,¹ and only there, in the absence of proof to show that its actual situs is elsewhere.² The fact that the mortgaged real estate has been taxed in the state where it is situated does not make a tax on the note secured by the mortgage objectionable as constituting double taxation.³

A mortgage upon real estate is sufficiently an interest in land to make it taxable in the state where the land is situated although the mortgage is owned by a nonresident.⁴ It may tax mortgaged land wholly to the mortgagor, or it may tax to the mortgagee the interest in the land represented by the mortgage and to the mortgagor the remaining interest in the land.⁵ In some jurisdictions, a real-estate mortgage owned and controlled by a nonresident of the state is not subject to taxation as "property in the state" in the absence of express requirement of statute.⁶ The interest of the mortgagee has been held to be taxable by the state where the land is located notwithstanding that by the local law, the mortgage does not convey legal title to the mortgagee but creates only a lien or encumbrance as security for debt.⁷ A State may tax the mortgagee's interest in land located within its borders, although both mortgagor and mortgagee are nonresidents, especially where the mortgagee is vested with a legal estate in the land.⁸ It cannot, however, tax the debt secured by a mortgage on property within its limits when held by nonresidents because the debt, as evidenced by a note or an issue of bonds, is personal property and is not within its jurisdiction.⁹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ Baldwin v. State of Missouri, 281 U.S. 586, 50 S. Ct. 436, 74 L. Ed. 1056, 72 A.L.R. 1303 (1930); Savings & Loan Soc. v. Multnomah County, 169 U.S. 421, 18 S. Ct. 392, 42 L. Ed. 803 (1898); Davis v. Penn Mut. Life Ins. Co., 198 Ga. 550, 32 S.E.2d 180, 160 A.L.R. 778 (1944).
- ² Baldwin v. State of Missouri, 281 U.S. 586, 50 S. Ct. 436, 74 L. Ed. 1056, 72 A.L.R. 1303 (1930).
- ³ State v. Darcy, 51 N.J.L. 140, 16 A. 160 (N.J. Sup. Ct. 1888), *aff'd*, 52 N.J.L. 222, 20 A. 319 (N.J. Ct. Err. & App. 1889).
- ⁴ Savings & Loan Soc. v. Multnomah County, 169 U.S. 421, 18 S. Ct. 392, 42 L. Ed. 803 (1898); Allen v. National Bank of Camden, N.J., 92 Md. 509, 48 A. 78 (1901).
- ⁵ Savings & Loan Soc. v. Multnomah County, 169 U.S. 421, 18 S. Ct. 392, 42 L. Ed. 803 (1898).
- ⁶ Adams v. Colonial & United States Mortg. Co., 82 Miss. 263, 34 So. 482 (1903).
- ⁷ Savings & Loan Soc. v. Multnomah County, 169 U.S. 421, 18 S. Ct. 392, 42 L. Ed. 803 (1898).
- ⁸ Allen v. National Bank of Camden, N.J., 92 Md. 509, 48 A. 78 (1901).
- ⁹ In re State Tax on Foreign-Held Bonds, 82 U.S. 300, 21 L. Ed. 179, 1872 WL 15392 (1872).

72 Am. Jur. 2d State and Local Taxation § 583

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

D. Particular Kinds and Classes

1. In General

§ 583. Bank deposits

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2212, 2403

A general deposit in a bank creates the relation of debtor and creditor between the bank and the depositor,¹ constituting intangible rather than tangible property.² Both as a matter of constitutional law and statutory construction, such a deposit has a situs for the purposes of property taxation in the state where the depositor is domiciled.³ Under this rule, statutes that require the listing for taxation of money deposited in any bank or other safe place are not limited in their application to deposits in banks within the state.⁴ Conversely, the mere fact that the bank is located in the taxing state is not sufficient to give a general deposit to the credit of a nonresident a local situs for the purposes of property taxation.⁵ However, the circumstances in connection with the deposit may be sufficient to give a general deposit to the credit of a nonresident a situs for purposes of property taxation in the state where the bank is located.⁶ Under the business situs rule, bank deposits of a nonresident that are maintained as incidental to the carrying on of a local business are subject to taxation by the State where they are kept.⁷ The latter rule has been applied even if the deposits were made simply for convenience of transmission to the principal and were not drawn against for any purposes of the business within the state.⁸ It does not apply to money on deposit in a state belonging to a nonresident owner and used by his or her agent to defray the current expenses of a business that were greater than the income derived therefrom.⁹ Moreover, the taxation of bank deposits owned by nonresidents, on the theory of having a situs at the bank of deposit, is dependent upon statutory authority and direction, which will not be lightly inferred.¹⁰

A bank deposit may be taxed to the depositor in the place where he or she lives, even if it is also lawfully taxed to the depositor in the place where it is deposited, without violating any provision of the Federal Constitution.¹¹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ As to the debtor-creditor relationship between a depositor and the bank, see [Am. Jur. 2d, Banks § 713](#).
- ² [Blodgett v. Silberman](#), 277 U.S. 1, 48 S. Ct. 410, 72 L. Ed. 749 (1928).
- ³ [Baldwin v. State of Missouri](#), 281 U.S. 586, 50 S. Ct. 436, 74 L. Ed. 1056, 72 A.L.R. 1303 (1930); [Fidelity & Columbia Trust Co. v. City of Louisville](#), 245 U.S. 54, 38 S. Ct. 40, 62 L. Ed. 145 (1917).
- ⁴ [State ex rel. American Automobile Ins. Co. v. Gehner](#), 320 Mo. 702, 8 S.W.2d 1057, 59 A.L.R. 1026 (1928).
- ⁵ [Baldwin v. State of Missouri](#), 281 U.S. 586, 50 S. Ct. 436, 74 L. Ed. 1056, 72 A.L.R. 1303 (1930); [Board of Assessors of the Parish of Orleans v. New York Life Ins. Co.](#), 216 U.S. 517, 30 S. Ct. 385, 54 L. Ed. 597 (1910); [Fleet Nat. Bank v. Clark](#), 714 A.2d 1172 (R.I. 1998).
- ⁶ [State ex rel. American Cent. Ins. Co. v. Gehner](#), 320 Mo. 901, 9 S.W.2d 621, 59 A.L.R. 1041 (1928).
- ⁷ [Fidelity & Columbia Trust Co. v. City of Louisville](#), 245 U.S. 54, 38 S. Ct. 40, 62 L. Ed. 145 (1917); [City of New Orleans v. Stemple](#), 175 U.S. 309, 20 S. Ct. 110, 44 L. Ed. 174 (1899).
- ⁸ [New England Mut. Life Ins. Co. v. Board of Assessors](#), 121 La. 1068, 47 So. 27 (1908).
- ⁹ [Hillman Land & Iron Co. v. Commonwealth](#), 148 Ky. 331, 146 S.W. 776 (1912).
- ¹⁰ [Board of Assessors of the Parish of Orleans v. New York Life Ins. Co.](#), 216 U.S. 517, 30 S. Ct. 385, 54 L. Ed. 597 (1910).
- ¹¹ [Fidelity & Columbia Trust Co. v. City of Louisville](#), 245 U.S. 54, 38 S. Ct. 40, 62 L. Ed. 145 (1917); [State ex rel. American Cent. Ins. Co. v. Gehner](#), 320 Mo. 901, 9 S.W.2d 621, 59 A.L.R. 1041 (1928).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 584

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

D. Particular Kinds and Classes

1. In General

§ 584. Seat or membership in exchange or board of trade

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2212

Membership in a stock or commodity exchange or a board of trade has been held to be intangible personal property having a situs at the domicile of its owner, and taxable there, although the exchange or board of trade is located elsewhere.¹ In other cases, without denying that membership in a stock exchange may be deemed to have a situs in the state of the domicile of the owner, memberships or seats in an exchange are taxable at the location of the exchange despite the nonresidence of the member.² A situs for ad valorem property taxation of partnership assets invested and reinvested on the New York Stock Exchange is exclusively in New York although the members of the firm are nonresidents.³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Anderson v. Durr](#), 100 Ohio St. 251, 126 N.E. 57, 17 A.L.R. 82 (1919), *aff'd*, 257 U.S. 99, 42 S. Ct. 15, 66 L. Ed. 149 (1921).

² [Rogers v. Hennepin County](#), 240 U.S. 184, 36 S. Ct. 265, 60 L. Ed. 594 (1916).

³ [Commonwealth v. Madden's Ex'r](#), 265 Ky. 684, 97 S.W.2d 561, 107 A.L.R. 1379 (1936).

72 Am. Jur. 2d State and Local Taxation § 585

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

D. Particular Kinds and Classes

1. In General

§ 585. Property in hands of person other than owner

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2202 to 2204, 2208, 2209, 2212, 2403

Custody and possession of personalty by one other than the owner thereof may be an important factor in determining actual situs of the property and, therefore, situs for purposes of taxation. One cannot, by taking possession of the personal property of another and holding it against his or her consent, give it a situs away from the domicile of the owner in such way as to subject it to taxation against the consent of the owner at the place of residence of the person wrongfully in possession of it.¹ When, however, one establishes a business in a state other than the state of his or her domicile, leaving the management of such business to an agent, such property is ordinarily considered as having a situs in the state where the business is located and the agent acts, and it is taxable there² under the general exception in favor of the accepted business situs for taxation purposes of intangibles.³

A State may impose an ad valorem tax on consigned jewelry owned by out-of-state consignors and held temporarily by an in-state jewelry store where the state taxation statute provides no exception based on the length of time that the merchandise is in state.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ Board of Councilmen of City of Frankfort v. Illinois Life Ins. Co., 129 Ky. 823, 112 S.W. 924 (1908).

² State Board of Assessors of Parish of Orleans v. Comptoir National D'Escompte de Paris, 191 U.S. 388, 24 S. Ct. 109, 48 L. Ed. 232 (1903); Bristol v. Washington County, 177 U.S. 133, 20 S. Ct. 585, 44 L. Ed. 701 (1900); Commonwealth v. Peebles, 134 Ky. 121, 119 S.W. 774 (1909).

³ § 570.

⁴ [Brown & Company Jewelry, Inc. v. Fulton County Bd. of Assessors](#), 248 Ga. App. 651, 548 S.E.2d 404 (2001).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 586

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

D. Particular Kinds and Classes

1. In General

§ 586. Decedent's estate; as between governmental units within state

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2212](#), [2213](#), [2403](#), [3321\(1\)](#)

Forms

[Am. Jur. Pleading and Practice Forms, Inheritance, Estate, and Gift Taxes § 29](#) (Affidavit—Reciting facts to establish decedent's residence at time of death)

For purposes of taxation of property belonging to the estate of a decedent held by the personal representative of the decedent, one must distinguish between cases in which the question involves the situs as between different governmental units within the state and those involving situs as between different states or countries.¹ As between different states or countries, the general rule is that the property is taxable at the domicile of the personal representative except in cases where the representative receives his or her authority solely from courts of another state, and the property in question is in another state.²

Many jurisdictions adopt the rule that the situs of personal property does not change upon the death of the owner while he or she is a resident of the state; the property is to be taxed at the decedent's former domicil within the state (the official residence of a personal representative) regardless of the residence within the state of the executors or administrators or of the beneficiaries.³ In other jurisdictions, however, courts, usually as the result of statutory persuasion, rule that the personal property of an estate, while in the hands of an executor or administrator, is subject to property taxes at the residence of such personal representative.⁴ Yet, even under this rule, where the taxes accrue and become due while the property is still in the possession of the decedent before his or her death, they are payable at the place where the decedent resided and not at the

residence of the personal representative.⁵

Where the rule prevails that the property of an estate is taxed at the residence of the personal representative of the deceased, and there are two or more such personal representatives, the rule adopted by most cases calls for a proportional taxation of the personal estate to each of the personal representatives without regard to where the property is.⁶ In some jurisdictions, however, each representative is required to list and return for taxation such property as is in his or her actual possession and control, such rule usually being adopted as a result of construction of particular tax statutes involved.⁷

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ City of Blakely v. Hilton, 150 Ga. 27, 102 S.E. 340 (1920); First Nat. Bank v. Commissioner of Corporations and Taxation, 279 Mass. 168, 181 N.E. 205 (1932).
- ² §§ 569, 587.
- ³ State v. Beardsley, 77 Fla. 803, 82 So. 794 (1919).
- ⁴ City of Fond du Lac v. Otto's Estate, 113 Wis. 39, 88 N.W. 917 (1902).
- ⁵ Board of Ed. of Glen Ellyn Tp. High School Dist. No. 87 v. Boger, 291 Ill. 191, 125 N.E. 768 (1919).
- ⁶ Appeal of Fidelity-Philadelphia Trust Co., 337 Pa. 34, 10 A.2d 547, 129 A.L.R. 265 (1939).
- ⁷ Burns v. McNally, 90 Iowa 432, 57 N.W. 908 (1894).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 587

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

D. Particular Kinds and Classes

1. In General

§ 587. Decedent's estate; as between governmental units within state—As between different states or countries

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2212](#), [2213](#), [2403](#), [3321\(2\)](#)

A.L.R. Library

[Property tax: business situs of intangibles held in trust in state other than beneficiary domicil, 59 A.L.R.3d 837](#)

Personal property in the hands of an executor or administrator in his or her official capacity is usually assessable and taxable to the executor at the place of his or her domicile.¹

The State of the domicile of a decedent cannot subject a decedent's personal estate to taxation where the estate is not actually within the state, and the executor or administrator who is its owner is a nonresident.² In the absence of statute, the fact that the beneficiaries of the trust are nonresidents does not prevent the application of the general rule.³ Where property of a decedent, although physically present in another state, has not acquired a situs there for purposes of taxation, it is taxable to the executor in the place where he or she is taxable on the general estate of the decedent.⁴ However, some cases hold that the mere domicile of the executor or administrator of the estate will not give the property a situs for property taxation if he or she receives authority solely from the court of another state, and the property in question is not in his or her actual possession at his or her domicile, but it is in another state.⁵ Property that has acquired an actual situs in another state is taxable, in the state where it is found, to the ancillary executor or administrator appointed to administer it.⁶ Accordingly, the interest held by a nonresident decedent in a Texas limited partnership at the time of death is subject to Oklahoma estate tax to the extent that it

includes Oklahoma property on which the partnership operated an Oklahoma business.⁷ Even if the domiciliary executor is also appointed ancillary executor for property found in another state, the executor cannot be taxed on property having its situs in such state in the state where he or she is taxable on the general estate.⁸

When there are two or more personal representatives residing in different states, taxes are generally apportioned between the different representatives⁹ but sometimes are assessed to the executor or administrator who has actual possession and control of the property.¹⁰

While the estate is properly in the process of settlement, the residence of the legatees or distributees is immaterial.¹¹ When, however, there is no further need of an executor or administrator and the legatees or distributees can legally demand their shares of the estate, the property becomes taxable at the domicile of the legatees or distributees.¹²

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Carpenter v. Com. of Pennsylvania](#), 58 U.S. 456, 17 How. 456, 15 L. Ed. 127, 1854 WL 7472 (1854); [Hemenway v. Town of Milton](#), 217 Mass. 230, 104 N.E. 362 (1914).
- ² [Bingham v. Long](#), 249 Mass. 79, 144 N.E. 77, 33 A.L.R. 809 (1924).
- ³ [Hemenway v. Town of Milton](#), 217 Mass. 230, 104 N.E. 362 (1914).
- ⁴ [Commonwealth v. Williams' Ex'r](#), 102 Va. 778, 47 S.E. 867 (1904).
- ⁵ [Commonwealth v. Peebles](#), 134 Ky. 121, 119 S.W. 774 (1909).
- ⁶ [Commonwealth v. Camden](#), 142 Ky. 365, 134 S.W. 914 (1911); [Putnam v. Town of Middleborough](#), 209 Mass. 456, 95 N.E. 749 (1911).
- ⁷ [Estate of Stuart v. State ex rel. Oklahoma Tax Com'n](#), 2008 OK CIV APP 85, 195 P.3d 1280 (Div. 2 2008).
- ⁸ [Putnam v. Town of Middleborough](#), 209 Mass. 456, 95 N.E. 749 (1911).
- ⁹ [Newcomb v. Paige](#), 224 Mass. 516, 113 N.E. 458 (1916).
- ¹⁰ [Crocker v. City of Malden](#), 229 Mass. 313, 118 N.E. 527 (1918).
- ¹¹ [Commonwealth v. Williams' Ex'r](#), 102 Va. 778, 47 S.E. 867 (1904).
- ¹² [Commonwealth v. Camden](#), 142 Ky. 365, 134 S.W. 914 (1911).

72 Am. Jur. 2d State and Local Taxation § 588

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

D. Particular Kinds and Classes

1. In General

§ 588. Property held by trustee or guardian

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2212, 2403

The trustee of personal property held in trust is the legal owner of the property, and unless it has actually acquired a situs in some other state, the trustee's state may tax the property even if the beneficiaries of the trust are residents of another state, and the trustee was appointed by courts of another state.¹ A State has no power to tax trustees under the will of one of its own residents, even though the trustees were appointed by and are accountable to its own probate courts, if they are residents of another state.² Legal ownership of intangibles in a state by a trustee located in that state affords adequate constitutional basis for imposing on the trustee a tax measured by the value of such intangibles, and the 14th Amendment does not relieve the trustee from the obligation to pay such a tax.³ In the absence of a provision to the contrary and often with statutory sanction or command, courts hold that, as against the contention that personal property held in trust is taxable in another place in the state, such property is taxable only at the residence or domicile of the trustee in the state.⁴ However, in some jurisdictions, the effect of the tax statutes is to make personal property held by a trustee taxable at the residence of the beneficiary of the trust rather than at the place of the residence of the trustee where the residences in the same state are at different places.⁵ However, if the situs of the trust property is not within the state of the trustee's domicil, he or she cannot be taxed on it in that state. In the case of tangible personal property permanently kept in a state other than where the trustee lives, the tax can be assessed only in the state where the property is.⁶

In the case of several trustees who are residents of different states, the tax in each state is ordinarily apportioned to the number of trustees therein resident.⁷ The same principle should be applied in the case of trustees who are residents of different cities and towns in the same state unless other provision is expressly made by law.⁸ The state legislature may constitutionally provide, for a tax imposed on personal property for county purposes, that co-trustees residing in different counties make returns and pay the tax in each of the counties where they reside in the proportion that the number of trustees residing in the county bears to the total number of trustees.⁹ Under some statutes, however, the whole trust property should be taxed in the state where the trustee who has custody and possession thereof resides.¹⁰

In case of a person under guardianship, some jurisdictions hold that the situs of his or her property is the domicile of the guardian.¹¹ Others hold that it is the domicile of the ward.¹²

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ Curry v. McCanless, 307 U.S. 357, 59 S. Ct. 900, 83 L. Ed. 1339, 123 A.L.R. 162 (1939); Safe Deposit & Trust Co. of Baltimore, Md., v. Commonwealth of Virginia, 280 U.S. 83, 50 S. Ct. 59, 74 L. Ed. 180, 67 A.L.R. 386 (1929); In re Dorrance's Will, 333 Pa. 162, 3 A.2d 682, 127 A.L.R. 366 (1939).
- ² City of Augusta v. Kimball, 91 Me. 605, 40 A. 666 (1898).
- ³ Curry v. McCanless, 307 U.S. 357, 59 S. Ct. 900, 83 L. Ed. 1339, 123 A.L.R. 162 (1939).
- ⁴ Appeal of Fidelity-Philadelphia Trust Co., 337 Pa. 34, 10 A.2d 547, 129 A.L.R. 265 (1939).
- ⁵ Hemenway v. Town of Milton, 217 Mass. 230, 104 N.E. 362 (1914).
- ⁶ Goodsite v. Lane, 139 F. 593 (C.C.A. 6th Cir. 1905); Hemenway v. Town of Milton, 217 Mass. 230, 104 N.E. 362 (1914).
- ⁷ Mackay v. City and County of San Francisco, 128 Cal. 678, 61 P. 382 (1900); Newcomb v. Paige, 224 Mass. 516, 113 N.E. 458 (1916).
- ⁸ Appeal of Fidelity-Philadelphia Trust Co., 337 Pa. 34, 10 A.2d 547, 129 A.L.R. 265 (1939).
- ⁹ Appeal of Fidelity-Philadelphia Trust Co., 337 Pa. 34, 10 A.2d 547, 129 A.L.R. 265 (1939).
- ¹⁰ Crocker v. City of Malden, 229 Mass. 313, 118 N.E. 527 (1918).
- ¹¹ Hurt v. City of Bristol, 104 Va. 213, 51 S.E. 223 (1905).
- ¹² Taylor v. Commonwealth, 124 Va. 445, 98 S.E. 5 (1919).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 589

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

D. Particular Kinds and Classes

1. In General

§ 589. Property held by trustee or guardian—State of domicile of beneficiaries

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2212, 2403

The fact that the beneficiaries of a trust are not residents does not deprive property subject to the trust a situs in the state where the trustee is domiciled. Such property is ordinarily taxed to the holder of the legal title in the jurisdiction of his or her residence or where the property is and not to the person with a beneficial interest.¹ In determining whether the property has a situs for taxation in the state where the cestui que trust resides, a distinction has been made in some cases between an assessment against the trustee and an assessment against the beneficiaries.² A trustee cannot be taxed as trust property held in his or her possession in the state of the trustee's residence in a state where he or she does not live merely because the beneficiary under the trust lives in such state.³ The U.S. Supreme Court has held unconstitutional a statute that imposes a tax, in the state where the beneficiaries of a trust reside, on a trustee domiciled in another state, on securities in the possession of such nonresident trustee in the state of his or her domicil and to the control or possession of which the beneficiaries have no present right, in violation of the 14th Amendment. This is an attempt to tax things wholly beyond the jurisdiction and control of the State.⁴ However, although the trust property cannot be taxed to the cestui que trust in the state of his or her domicile where the property is in the possession of a nonresident trustee in another state, the equitable interests of the beneficiary of such trust may be taxed as personal property in the state of his or her residence where the statute so provides.⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Welch v. City of Boston](#), 221 Mass. 155, 109 N.E. 174 (1915).

² [Safe Deposit & Trust Co. of Baltimore, Md., v. Commonwealth of Virginia](#), 280 U.S. 83, 50 S. Ct. 59, 74 L. Ed. 180, 67 A.L.R. 386 (1929).

³ Safe Deposit & Trust Co. of Baltimore, Md., v. Commonwealth of Virginia, 280 U.S. 83, 50 S. Ct. 59, 74 L. Ed. 180, 67 A.L.R. 386 (1929); Brooke v. City of Norfolk, 277 U.S. 27, 48 S. Ct. 422, 72 L. Ed. 767 (1928).

⁴ Safe Deposit & Trust Co. of Baltimore, Md., v. Commonwealth of Virginia, 280 U.S. 83, 50 S. Ct. 59, 74 L. Ed. 180, 67 A.L.R. 386 (1929).

⁵ Safe Deposit & Trust Co. of Baltimore, Md., v. Commonwealth of Virginia, 280 U.S. 83, 50 S. Ct. 59, 74 L. Ed. 180, 67 A.L.R. 386 (1929).

As to assessment of state income tax on trust property income paid to nonresident beneficiary of resident trust, see § 640.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 590

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

D. Particular Kinds and Classes

1. In General

§ 590. Partnership property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2198, 2403

A partner's interest in a partnership business may be made taxable by the State of the domicile of the partner.¹ However, the interest of a partner in a partnership may be regarded as separate from his or her person for the purposes of taxation,² and in the absence of a controlling statute to the contrary, such interest is regarded as having its situs at the place where the business of the partnership is carried on.³

In general, in determining the situs for ad valorem property taxes, the same rules apply to a trading partnership composed of nonresidents of the state where the business is carried on as govern the case of an individual trader similarly situated. When a partnership has its place of business in a state other than that where the partners dwell, the situs of the property, tangible or intangible, used in connection with the business is the state where the place of business is located.⁴ Stock in trade of a partnership doing business in a city, which remains there until it is sold in course of business, is "permanently located" there for purposes of taxation, without regard to the residence of members of the firm, within the meaning of a provision making goods taxable at the residence of the owner except when "permanently located" elsewhere.⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Blodgett v. Silberman](#), 277 U.S. 1, 48 S. Ct. 410, 72 L. Ed. 749 (1928).

² [Tappan v. Merchants' Nat. Bank of Chicago](#), 86 U.S. 490, 22 L. Ed. 189, 1873 WL 16037 (1873).

³ [Spinney v. City of Lynn](#), 172 Mass. 464, 52 N.E. 523 (1899).

⁴ Clay, Robinson & Co. v. Douglas County, 88 Neb. 363, 129 N.W. 548 (1911).

⁵ Hopkins v. Baker, 78 Md. 363, 28 A. 284 (1894).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 591

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

D. Particular Kinds and Classes

1. In General

§ 591. Rolling stock

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2212, 2403

A.L.R. Library

[Situs of aircraft, rolling stock, and vessels for purposes of property taxation, 3 A.L.R.4th 837](#)

Where rolling stock of a railroad company is at all times physically located within the territory of a state other than that of its owner's domicile, such State may impose taxes upon it,¹ but where rolling stock is within the borders of a state other than that of its owner's residence for only part of the time, a more difficult question arises. Although there is some authority to the contrary,² railroad rolling stock owned by a corporation domiciled without the state, continuously passing into or through the state, acquires a situs there for purposes of taxation although no one car remains permanently within the state.³ On the other hand, a railroad car owned by a corporation domiciled in another state does not acquire a taxable situs by mere temporary transit through a state, that is, by a single unconnected trip.⁴ The shifting units must be used or employed together as parts of a whole receiving the protection of the State. There must be some cohesive principle that brings together the changing and shifting units so that they may be seen as a whole before they can acquire a taxable situs.⁵

To accept the proposition that a mere general showing of continuous use of movable property outside the domiciliary state is sufficient to exclude the taxing power of that State with respect to it would surely result in an unsound rule; in instances where it was ultimately found that a tax situs existed in no other state, such property would escape this kind of taxation entirely.⁶ A mere showing that a determinable number of appellant's cars were employed outside the state during the relevant

tax year, which leaves the possibility of the cars having a nondomiciliary tax situs elsewhere, does not suffice to exclude the domiciliary state from taxing such cars to their full value.⁷

Following the reasoning of railroad cases, courts have tailored decisions for trucking companies,⁸ vehicle leasing companies,⁹ and aircraft.¹⁰

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ Norfolk & W. Ry. Co. v. Missouri State Tax Commission, 390 U.S. 317, 88 S. Ct. 995, 19 L. Ed. 2d 1201 (1968).
- ² In re Union Tank Line Co., 204 Ill. 347, 68 N.E. 504 (1903).
- ³ Johnson Oil Refining Co. v. State of Oklahoma ex rel. Mitchell, 290 U.S. 158, 54 S. Ct. 152, 78 L. Ed. 238 (1933); Union Tank Line v. Wright, 249 U.S. 275, 39 S. Ct. 276, 63 L. Ed. 602 (1919).
- ⁴ Pullman's Palace-Car Co. v. Twombly, 29 F. 658 (C.C.S.D. Iowa 1887).
- ⁵ Commonwealth v. Union Pac. R. Co., 214 Ky. 339, 283 S.W. 119, 49 A.L.R. 1091 (1926).
- ⁶ Central R. Co. of Pa. v. Com. of Pa., 370 U.S. 607, 82 S. Ct. 1297, 8 L. Ed. 2d 720 (1962).
- ⁷ Central R. Co. of Pa. v. Com. of Pa., 370 U.S. 607, 82 S. Ct. 1297, 8 L. Ed. 2d 720 (1962).
- ⁸ Beelman Truck Co. v. Ste. Genevieve County Bd. of Equalization, 861 S.W.2d 557 (Mo. 1993), as modified on denial of reh'g, (Sept. 29, 1993); Winchester and Western R. Co. v. State Corp. Com'n, 236 Va. 473, 374 S.E.2d 66 (1988).
- ⁹ Ryder Truck Rental, Inc. v. County of Chesterfield, 248 Va. 575, 449 S.E.2d 813 (1994).
- ¹⁰ § 592.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 592

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

D. Particular Kinds and Classes

1. In General

§ 592. Aircraft

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2212, 2403

A.L.R. Library

[Situs of aircraft, rolling stock, and vessels for purposes of property taxation](#), 3 A.L.R.4th 837

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 69](#) (Complaint, petition, or declaration—For refund of property taxes—Wrongful assessment of airplane used as part of fleet in interstate commerce)

Following the reasoning of railroad cases,¹ courts have tailored decisions involving aircraft.²

The general rule applicable is that the county or other local tax unit where the taxpayer's principal office is located is, in the absence of a contrary statute, the place where its personal property is to be taxed.³ Fixed and regular routes are sufficient to create a tax situs for instrumentalities of interstate commerce within a state but are not necessary.⁴ Thus, although an airplane was continuously located in a state from the beginning of the year through early September, where it was in that state only for the installation of a custom interior, rather than for regular use as an airplane, and the owner presented no evidence that the

airplane was intended to remain in that state after the interior was completed, the taxing situs would be the state of the owner's principal place of business, not the state where the installation occurred.⁵ However, an airplane was present for tax purposes within the state where it made nine of 42 total departures from within that state and was present in the state while being refitted for commercial lease.⁶ Moreover, evidence that an aircraft was relocated from one state to a second state after a hurricane; that the aircraft owners maintained aircraft log books, maintenance records, and paperwork in the second state; and that the aircraft remained at an airport in the second state as part of lease agreement to store aircraft is legally and factually sufficient to support the finding that the corporate aircraft was located in the second state for more than a temporary period for purposes of assessing ad valorem taxes.⁷

Instrumentalities of interstate commerce, such as airplanes, trains, and inland water vessels, may acquire a tax situs in multiple states.⁸ "Allocating" is determining the ratio of usage of aircraft within each taxable situs when the property has more than one taxable situs.⁹

The owner of an airplane used for business purposes may seek a reduction in the amount of total taxes owed upon the airplane by showing that another state or jurisdiction has acquired the right to tax the same airplane.¹⁰ The actual taxes owed in one state on a business airplane thus may be reduced proportionately to reflect the amount of use in that state, and the state's appraisal office will allocate to the State the portion of the total market value of the property to fairly reflect its use in the state.¹¹

Caution:

Where permissible, such interstate allocation is not automatic and must be requested by the property owner.¹²

CUMULATIVE SUPPLEMENT

Cases:

Retroactive application of new personal property tax against the managers of fractionally owned aircraft violated due process, and thus court would remove legislation's unconstitutional retroactivity provisions. [U.S.C.A. Const.Amend. 14](#); [West's Ann.Cal.Rev. & T.Code § 1161\(a\)\(1, 2\)](#). [NetJets Aviation, Inc. v. Guillory](#), 207 Cal. App. 4th 26, 143 Cal. Rptr. 3d 111 (4th Dist. 2012), as modified on denial of reh'g, (July 18, 2012) and review filed, (Aug. 1, 2012).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ §§ 591, 592.

² [American Airlines, Inc. v. County of San Mateo](#), 12 Cal. 4th 1110, 51 Cal. Rptr. 2d 251, 912 P.2d 1198 (1996); [Alaska Airlines, Inc. v. Department of Revenue](#), 307 Or. 406, 769 P.2d 193 (1989); [Appraisal Review Bd. of Galveston County, Tex. v. Tex-Air Helicopters, Inc.](#), 970 S.W.2d 530 (Tex. 1998).

- 3 § 579.
- 4 Flight Options, LLC v. State, Dept. of Revenue, 172 Wash. 2d 487, 259 P.3d 234 (2011).
- 5 In re Appeal of SAS Institute Inc. from a decision of Wake County Bd. of Com'rs for 2006, 200 N.C. App. 238, 684 S.E.2d 444 (2009).
- 6 A/K Service, LLC v. Harris County Appraisal Dist., 2008 WL 4890140 (Tex. App. Houston 1st Dist. 2008).
- 7 Starflight 50, L.L.C. v. Harris County Appraisal Dist., 287 S.W.3d 741 (Tex. App. Houston 1st Dist. 2009).
- 8 Flight Options, LLC v. State, Dept. of Revenue, 172 Wash. 2d 487, 259 P.3d 234 (2011).
- 9 Starflight 50, L.L.C. v. Harris County Appraisal Dist., 287 S.W.3d 741 (Tex. App. Houston 1st Dist. 2009).
- 10 Starflight 50, L.L.C. v. Harris County Appraisal Dist., 287 S.W.3d 741 (Tex. App. Houston 1st Dist. 2009).
- 11 Starflight 50, L.L.C. v. Harris County Appraisal Dist., 287 S.W.3d 741 (Tex. App. Houston 1st Dist. 2009).
- 12 A/K Service, LLC v. Harris County Appraisal Dist., 2008 WL 4890140 (Tex. App. Houston 1st Dist. 2008).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 593

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

D. Particular Kinds and Classes

1. In General

§ 593. Vessels; situs as between states

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2212, 2403

A.L.R. Library

[Situs of aircraft, rolling stock, and vessels for purposes of property taxation, 3 A.L.R.4th 837](#)

The situs of a ship for purposes of taxation is, unless it has acquired an actual situs elsewhere, the domicile of the owner,¹ which, in the case of a corporate owner, is the state under the laws of which the corporation was created.²

Similarly, a legislature may impose a properly apportioned tax upon transitory interstate maritime property in a nondomiciliary state.³ If the ship has not acquired a situs elsewhere, and the legislature of the nondomiciliary state has not imposed a proportionate tax on transitory maritime property, the domicile rule applies even though the ship is constantly being taken on voyages outside the limits of that state.⁴ The principle is also applicable in the case of vessels that have never been in the state of the owner's domicile⁵ that may be unable due to depth of water to go to any place in such state and registered or enrolled in a different state.⁶

A ship or vessel can be taxed only at its legal situs—its home port and the domicile of its owner⁷—and is not taxable by a State other than that in which its owner resides, to which it plies, and at which it is temporarily staying while loading or unloading its cargo.⁸ A vessel does not acquire a situs for taxation purposes by its continuous stay in a taxing district where such stay was involuntary, being compelled by the rigors of the season or war conditions,⁹ though not by financial inability of

the owner to move the vessel.¹⁰

The owner has no power to give his or her vessel a taxable situs by the arbitrary selection of a home port that is neither its domicile nor the domicile of actual situs.¹¹ When a vessel is kept and used wholly within the limits of a state other than that where its owner resides, it acquires a situs in such state for the purposes of taxation that controls the situs of the owner's domicile¹² irrespective of the vessel's port of registry.¹³ This is so even if the vessel is employed in interstate commerce as long as it is so employed wholly within the limits of a state.¹⁴

The base of operations or place of business of pleasure vessels has been held to be their situs for purposes of taxation.¹⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ Southern Pac. Co. v. Commonwealth of Kentucky, 222 U.S. 63, 32 S. Ct. 13, 56 L. Ed. 96 (1911); State ex rel. U.S. Lines Co. v. Second Judicial Dist. Court of Nevada, 56 Nev. 38, 43 P.2d 173 (1935).
- ² Ayer & Lord Tie Co. v. Commonwealth of Kentucky, 202 U.S. 409, 26 S. Ct. 679, 50 L. Ed. 1082 (1906).
- ³ Ott v. Mississippi Val. Barge Line Co., 336 U.S. 169, 69 S. Ct. 432, 93 L. Ed. 585 (1949).
- ⁴ Ayer & Lord Tie Co. v. Commonwealth of Kentucky, 202 U.S. 409, 26 S. Ct. 679, 50 L. Ed. 1082 (1906); City of St. Louis v. Wiggins Ferry Co., 78 U.S. 423, 20 L. Ed. 192, 1870 WL 12776 (1870).
- ⁵ Commonwealth v. American Dredging Co., 122 Pa. 386, 15 A. 443 (1888).
- ⁶ Southern Pac. Co. v. Commonwealth of Kentucky, 222 U.S. 63, 32 S. Ct. 13, 56 L. Ed. 96 (1911); State ex rel. U.S. Lines Co. v. Second Judicial Dist. Court of Nevada, 56 Nev. 38, 43 P.2d 173 (1935).
- ⁷ Pullmans Palace Car Co. v. Com. of Pennsylvania, 141 U.S. 18, 11 S. Ct. 876, 35 L. Ed. 613 (1891); Wheeling, P. & C. Transp. Co. v. City of Wheeling, 99 U.S. 273, 25 L. Ed. 412, 1878 WL 18244 (1878).
- ⁸ Morgan v. Parham, 83 U.S. 471, 21 L. Ed. 303, 1872 WL 15296 (1872); Martinac v. San Diego County, 255 Cal. App. 2d 175, 63 Cal. Rptr. 64 (4th Dist. 1967).
- ⁹ Guinness v. King County, 32 Wash. 2d 503, 202 P.2d 737, 6 A.L.R.2d 1361 (1949).
- ¹⁰ Bush v. State ex rel. Dade County, 140 Fla. 277, 191 So. 515 (1939).
- ¹¹ Southern Pac. Co. v. Commonwealth of Kentucky, 222 U.S. 63, 32 S. Ct. 13, 56 L. Ed. 96 (1911); County of San Diego v. Lafayette Steel, Co., 164 Cal. App. 3d 690, 210 Cal. Rptr. 493 (4th Dist. 1985); Mary Transport Co. v. Director of Revenue, 606 S.W.2d 638 (Mo. 1980).
- ¹² Guinness v. King County, 32 Wash. 2d 503, 202 P.2d 737, 6 A.L.R.2d 1361 (1949).
- ¹³ Northwestern Lumber Co. v. Chehalis County, 25 Wash. 95, 64 P. 909 (1901).
- ¹⁴ Old Dominion S.S. Co. v. Commonwealth of Virginia, 198 U.S. 299, 25 S. Ct. 686, 49 L. Ed. 1059 (1905).
- ¹⁵ Guinness v. King County, 32 Wash. 2d 503, 202 P.2d 737, 6 A.L.R.2d 1361 (1949).

72 Am. Jur. 2d State and Local Taxation § 594

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

D. Particular Kinds and Classes

1. In General

§ 594. Vessels; situs as between states—Situs within state

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2212, 2403

A.L.R. Library

[Situs of aircraft, rolling stock, and vessels for purposes of property taxation, 3 A.L.R.4th 837](#)

Vessels are to be taxed in the local taxing unit designated by the legislature.¹ Where the problem is not settled by express statutory language, the rules relating to the determination of the tax situs of vessels as between states are generally applicable.² The taxing district of the owner's domicile is controlling in some instances³ even though the ship is registered at a port in a different taxing district.⁴ Moreover, the general rule applicable is that the county or other local tax unit where the taxpayer's principal office is located is, in the absence of a contrary statute, the place where its personal property is to be taxed.⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Wright v. Mayor, Etc., of Brunswick, 140 Ga. 231, 78 S.E. 839 \(1913\).](#)

² [Old Dominion S.S. Co. v. Commonwealth of Virginia, 198 U.S. 299, 25 S. Ct. 686, 49 L. Ed. 1059 \(1905\); Wiggins](#)

Ferry Co. v. City of East St. Louis, 107 U.S. 365, 2 S. Ct. 257, 27 L. Ed. 419 (1883).

³ Middletown Ferry Co. v. Town of Middletown, 40 Conn. 65, 1873 WL 1393 (1873).

⁴ City of Mobile v. Baldwin, 57 Ala. 61, 1876 WL 1282 (1876).

⁵ § 579.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 595

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

D. Particular Kinds and Classes

1. In General

§ 595. Public utilities and services

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2212, 2400, 2402, 2403

Although the principles relating generally to the place of property taxation¹ are applicable to many kinds of property owned by public utilities, the taxation of certain classes of property owned by utilities presents a number of distinctive features. Thus, such items of property as mains, pipes, and hydrants may be regarded as appurtenant to the building and machinery to which they are attached and from which they emanate; they are consequently to be assessed in the taxing district where such building and machinery are located even though the pipes or mains extend into other taxing districts.² Some courts, however, hold that under the provisions of applicable statutes, mains, pipes, aqueducts, wires, conduits, etc., are taxable as real estate in the taxing district where they are physically located although the building or plant from which they emanate is situated in another taxing district.³

The place of taxation for a franchise of a public utility that uses the streets of a municipality has a local character so as to be taxable in the city whose streets are used even though the principal office is in another taxing district.⁴ However, some courts hold that a public utility having within a particular county nothing but a pipe and right of way therefor, without any privilege to take tolls, collect rates, or enjoy any other special prerogative or advantage, has no “franchise” within the county subject to taxation therein.⁵

The fact that certain property, such as wires and aerial cables, may not be exempt from local property taxation does not by itself make that property subject to assessment.⁶

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ §§ 547 to 553.
- ² Oskaloosa Water Co. v. Board of Equalization of City of Oskaloosa, 84 Iowa 407, 51 N.W. 18 (1892).
- ³ Inhabitants of Paris v. Norway Water Co., 85 Me. 330, 27 A. 143 (1893).
- ⁴ Stockton Gas & Elec. Co. v. San Joaquin County, 148 Cal. 313, 83 P. 54 (1905).
- ⁵ Spring Val. Waterworks v. Barber, 99 Cal. 36, 33 P. 735 (1893).
- ⁶ Warner Amex Cable Communications Inc. v. Board of Assessors of Everett, 396 Mass. 239, 485 N.E.2d 177 (1985).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 596

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

D. Particular Kinds and Classes

2. Shares of Stock

§ 596. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2212, 2238, 2403

Shares of stock, although sometimes considered tangible or quasi-tangible property, are ordinarily considered to be a species of intangible personal property that under the maxim “mobilia sequuntur personam” may be taxed to the individual owner in the state where he or she resides,¹ even though the corporation is a foreign corporation² and even though it does no business and owns no property in such state,³ at least where such shares have not acquired a business situs elsewhere.⁴ The location of the assets of the corporation is not a material fact in determining the liability of the shares of such a corporation for taxes.⁵ Shares of stock, in the absence of legislation prescribing a different rule, “are appropriately related to the owner and, being held by the owner at his or her domicile, constitute property for which the owner is under obligation to contribute to the support of the government whose protection he or she enjoys.”⁶

Local property tax has been held to fall on the land itself and not on the landowner's equity in the land.⁷

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Hawley v. City of Malden](#), 232 U.S. 1, 34 S. Ct. 201, 58 L. Ed. 477 (1914); [Humpage v. Robards](#), 229 Kan. 461, 625 P.2d 469 (1981).

² [§ 597](#).

³ [Hawley v. City of Malden](#), 232 U.S. 1, 34 S. Ct. 201, 58 L. Ed. 477 (1914).

⁴ Miller v. McColgan, 17 Cal. 2d 432, 110 P.2d 419, 134 A.L.R. 1424 (1941).

⁵ Wright v. Louisville & N.R. Co., 236 U.S. 687, 35 S. Ct. 475, 59 L. Ed. 788 (1915); Coca-Cola Co. v. City of Atlanta, 152 Ga. 558, 110 S.E. 730, 23 A.L.R. 1339 (1922).

⁶ Hawley v. City of Malden, 232 U.S. 1, 34 S. Ct. 201, 58 L. Ed. 477 (1914).

⁷ First NH Bank v. Town of Windham, 138 N.H. 319, 639 A.2d 1089 (1994).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 597

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

D. Particular Kinds and Classes

2. Shares of Stock

§ 597. Shares of resident in foreign corporation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2212, 2238, 2403

On the theory that shares of stock in a corporation constitute a species of personal property that follows the owner and has its situs, for purposes of taxation, at the domicile of the owner, the right and power of a State to impose a property tax upon shares of stock in a foreign corporation owned by a resident (or by a domestic corporation) has been generally sustained¹ even though the property or business of the corporation is located in a state other than the domicile of the shareholder,² and the shares or certificates of stock may not be physically within the state.³ Shares of stock in a foreign corporation are appropriately related to the person of the owner and, being held at his or her domicile, constitute property for which the owner is under obligation to contribute to the support of the government whose protection he or she enjoys.⁴ It is immaterial that the shares do not earn money.⁵ However, the keeping of the certificates in another state, in connection with other facts indicating the surrender of power and control of the stock, may be sufficient to establish a situs outside the state of the owner's domicile and prevent it from asserting the rights of taxation.⁶

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [City and County of Denver v. Hobbs' Estate](#), 58 Colo. 220, 144 P. 874 (1914); [Starkey v. Carson](#), 138 Fla. 301, 189 So. 385 (1939).

² [Hawley v. City of Malden](#), 232 U.S. 1, 34 S. Ct. 201, 58 L. Ed. 477 (1914); [Com. v. Sunbury Converting Works](#), 286 Pa. 545, 134 A. 438, 48 A.L.R. 992 (1926).

³ [Starkey v. Carson](#), 138 Fla. 301, 189 So. 385 (1939).

⁴ Hawley v. City of Malden, 232 U.S. 1, 34 S. Ct. 201, 58 L. Ed. 477 (1914); Barnes v. Jones, 139 Miss. 675, 103 So. 773, 43 A.L.R. 673 (1925).

⁵ Hart v. Smith, 159 Ind. 182, 64 N.E. 661 (1902).

⁶ Central of Georgia Ry. Co. v. Wright, 166 F. 153 (C.C.N.D. Ga. 1908).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 598

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

D. Particular Kinds and Classes

2. Shares of Stock

§ 598. Effect of constitutional guaranties and limitations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2212, 2238, 2403

The taxation of a resident upon shares owned by him or her in a foreign corporation violates no provision of the Federal Constitution¹ even though the corporation does no business and has no property within the state.² Any doubt as to the authority of a State to impose such a property tax has been put to rest by decisions of the Supreme Court of the United States.³ In particular, courts have denied that the imposition of a property tax upon shares of stock in a foreign corporation owned by a resident of the state conflicts with the constitutional guaranty of equal protection of the laws⁴ even though in the case of domestic corporations it is the property and not the shares that is taxed.⁵ The imposition of such a tax upon the shares of a foreign corporation, which are also taxed in the foreign state, does not conflict with the provision of the Federal Constitution providing for the giving of full faith and credit to the public acts of other states;⁶ in addition, it does not constitute an impairment of the obligation of contract.⁷ The taxation of a resident of the state upon shares of stock held by him or her in foreign corporations that do no business and have no property within the state does not take his or her property without due process of law.⁸

Although the State may have the power to tax its residents upon shares of stock that they hold in foreign corporations, it may by local constitutional provision limit the exercise of it by the legislature. However, a clause of the state constitution declaring that “the burdens of the state ought to be fairly distributed among its citizens” does not render void the taxation of shares owned by a resident in a foreign corporation merely because such shares are also taxed in the foreign state.⁹ A statute providing one mode of taxation as to stock in foreign corporations and a different mode for stock in domestic corporations¹⁰ or taxing shares held by residents of the state in foreign corporations while exempting from taxation shares of domestic corporations whose property is taxed by the State does not violate a provision of the state constitution requiring uniformity and equality in taxation.¹¹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ Barnes v. Jones, 139 Miss. 675, 103 So. 773, 43 A.L.R. 673 (1925).
- ² Hawley v. City of Malden, 232 U.S. 1, 34 S. Ct. 201, 58 L. Ed. 477 (1914).
- ³ Hawley v. City of Malden, 232 U.S. 1, 34 S. Ct. 201, 58 L. Ed. 477 (1914); Darnell v. State of Indiana, 226 U.S. 390, 33 S. Ct. 120, 57 L. Ed. 267 (1912).
- ⁴ Darnell v. State of Indiana, 226 U.S. 390, 33 S. Ct. 120, 57 L. Ed. 267 (1912).
- ⁵ Darnell v. State of Indiana, 226 U.S. 390, 33 S. Ct. 120, 57 L. Ed. 267 (1912); Kidd v. State of Alabama, 188 U.S. 730, 23 S. Ct. 401, 47 L. Ed. 669 (1903).
- ⁶ Bellows Falls Power Co. v. Com., 222 Mass. 51, 109 N.E. 891 (1915).
- ⁷ Bellows Falls Power Co. v. Com., 222 Mass. 51, 109 N.E. 891 (1915).
- ⁸ Hawley v. City of Malden, 232 U.S. 1, 34 S. Ct. 201, 58 L. Ed. 477 (1914); Bellows Falls Power Co. v. Com., 222 Mass. 51, 109 N.E. 891 (1915).
- ⁹ Dyer v. Osborne, 11 R.I. 321, 1876 WL 4786 (1876).
- ¹⁰ In re Buckhannon River Coal Co., 113 Neb. 230, 202 N.W. 616 (1925).
- ¹¹ § 262.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 599

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

D. Particular Kinds and Classes

2. Shares of Stock

§ 599. Effect of other taxation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2212, 2238, 2403

Even if property of a foreign corporation is assessed and taxed in its state of domicile, or in another foreign state or country where the corporation does business or has property, this does not affect the right of the State of domicile of an owner of shares to levy property taxes upon those shares.¹ When a State finds property within its jurisdiction, it is not necessary, before taxing it, to investigate and ascertain whether any other State has already taxed it or asserts the right so to do.²

Some cases hold that the right of the State to tax shares of stock held by a resident in a foreign corporation is not affected by the fact that a part or all of the property owned by the corporation is within the state assuming to impose the tax and taxable therein.³ Other courts have refused to accept this rule.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Hawley v. City of Malden](#), 232 U.S. 1, 34 S. Ct. 201, 58 L. Ed. 477 (1914); [Darnell v. State of Indiana](#), 226 U.S. 390, 33 S. Ct. 120, 57 L. Ed. 267 (1912).

² [Judy v. Beckwith](#), 137 Iowa 24, 114 N.W. 565 (1908).

³ [Sturges v. Carter](#), 114 U.S. 511, 5 S. Ct. 1014, 29 L. Ed. 240 (1885); [Coca-Cola Co. v. City of Atlanta](#), 152 Ga. 558, 110 S.E. 730, 23 A.L.R. 1339 (1922).

⁴ [Stroh v. City of Detroit](#), 131 Mich. 109, 90 N.W. 1029 (1902).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 600

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

D. Particular Kinds and Classes

2. Shares of Stock

§ 600. Construction and application of tax statutes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2212](#), [2238](#), [2403](#)

Frequently, the statutes of a state provide in express terms for the taxation of shares owned by residents in foreign corporations where not otherwise exempted.¹ However, this is not universally true. The question then arises whether such shares come within the intent and purpose of existing statutes. A statute requiring taxation of all property within the state is construed to require taxation, without deduction, of shares in foreign corporations owned by residents of the state because the property of the corporation is located and taxed outside the state.² This is true even when the constitution of the state expressly prohibits double taxation³ or when the property of the corporation is located and taxed within the state.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ § 262.

² [Wright v. Louisville & N.R. Co.](#), 195 U.S. 219, 25 S. Ct. 16, 49 L. Ed. 167 (1904); [State v. Harrington](#), 68 Mont. 1, 217 P. 681 (1923).

³ [Thrall v. Guiney](#), 141 Mich. 392, 104 N.W. 646 (1905).

⁴ [Sturges v. Carter](#), 114 U.S. 511, 5 S. Ct. 1014, 29 L. Ed. 240 (1885).

Works.

72 Am. Jur. 2d State and Local Taxation § 601

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

D. Particular Kinds and Classes

2. Shares of Stock

§ 601. Shares in domestic corporation owned by nonresident

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2212, 2238, 2403

The fact that a State may tax shares of stock owned by residents in foreign corporations does not mean that it cannot also tax shares issued by domestic corporations and owned by nonresidents. There is some authority for the view that it is beyond the power of the State to give a local situs for property taxation to shares of stock owned by nonresidents in domestic corporations.¹ However, many courts hold that the sovereignty that creates a corporation, having the incidental right to impose reasonable regulations concerning the ownership of shares of corporate stock, may establish the situs of such stock within the state regardless of the place of residence of the shareholders.²

The rule is not affected by the fact that the tax statute was enacted after the granting of the corporate charter. It says nothing about the situs of the shares or where the state constitution contains the reserved right to amend or repeal corporate charters. Such shares are taxable at the corporation's domicile notwithstanding that they may be also taxable in another state.³

No violation of due process occurs when a nonresident stockholder in a domestic corporation is personally liable, as a condition of ownership of the stock, for taxes upon his or her stock. Liability may be enforced by a personal action against him or her by the corporation to recover the amount of tax that the corporation paid on the stockholder's behalf.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Crossley v. Township Committee of East Orange](#), 62 N.J.L. 583, 41 A. 712 (N.J. Sup. Ct. 1898).

² [Blodgett v. Silberman](#), 277 U.S. 1, 48 S. Ct. 410, 72 L. Ed. 749 (1928); [Rhode Island Hospital Trust Co. v. Doughton](#),

§ 601. Shares in domestic corporation owned by nonresident, 72 Am. Jur. 2d State and...

270 U.S. 69, 46 S. Ct. 256, 70 L. Ed. 475, 43 A.L.R. 1374 (1926); *Intermountain Agr. Credit Ass'n v. Payette County*, 54 Idaho 307, 31 P.2d 267 (1934).

³ *Schuylkill Trust Co. v. Com. of Pennsylvania*, 302 U.S. 506, 58 S. Ct. 295, 82 L. Ed. 392 (1938).

⁴ *Corry v. City of Baltimore*, 196 U.S. 466, 25 S. Ct. 297, 49 L. Ed. 556 (1905).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 602

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

D. Particular Kinds and Classes

2. Shares of Stock

§ 602. Business situs of shares of stock

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2212](#), [2238](#), [2403](#)

A.L.R. Library

[Property tax: business situs of intangibles held in trust in state other than beneficiary domicil, 59 A.L.R.3d 837](#)

Shares of stock may be deemed to have a business situs in a state other than the domicile of the owner.¹ They may have a situs for the purposes of taxation in a state where they are permanently kept regardless of the domicile of the owner or the state where the corporation was organized.² In contrast, if shares of stock in a given instance are kept out of the state for the purposes of evading taxation, they do not come within the rule as to business situs but are controlled by the maxim “mobilia sequuntur personam” and are taxed at the domicile of their owner; the same is true if they are out of the state for a special and temporary purpose as where they are pledged for the payment of a debt.³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [First Bank Stock Corp. v. State of Minnesota, 301 U.S. 234, 57 S. Ct. 677, 81 L. Ed. 1061, 113 A.L.R. 228 \(1937\); Starkey v. Carson, 138 Fla. 301, 189 So. 385 \(1939\) \(recognizing rule\).](#)

² People ex rel. Hatch v. Reardon, 184 N.Y. 431, 77 N.E. 970 (1906), *aff'd*, 204 U.S. 152, 27 S. Ct. 188, 51 L. Ed. 415 (1907).

³ State v. Harrington, 68 Mont. 1, 217 P. 681 (1923).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 603

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eight. Place of Tax

XXXVIII. Personal Property

D. Particular Kinds and Classes

2. Shares of Stock

§ 603. Taxation by more than one state

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2212, 2238, 2403

There is no rule of immunity from taxation of intangibles by more than one state.¹ Shares of corporate stock may be taxed at the domicile of the shareholder, as well as at that of the corporation, that the taxing state has created and controls. Protection, benefit, and power over the subject matter are not confined to either state.² In other words, in case of shares of stock, jurisdiction to tax is not restricted to the domiciliary state, but rather, the other State which has extended benefits or protection or which can demonstrate the practical fact of its power or sovereignty as respects the shares may likewise make its exaction.³ A State cannot establish the situs of stock of its own corporations within its limits so as to deprive the states where the stockholders reside the power to tax them for their respective shares. The stock of a corporation owned by a nonresident may be taxed both in the state of incorporation and in the state of the stockholder's domicile.⁴ Apart from such reserved power, the property of the shareholders in their respective shares is distinct from corporate property franchises and capital stock. They may be separately taxed even though the property and franchises of the corporation are also taxed where situated, and the capital stock is taxed in the state where the corporation was organized.⁵ The same principle applies even if the capital stock is taxed to the corporation and the shares of stock to the individual shareholders in the same state.⁶

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ Estate of Stuart v. State ex rel. Oklahoma Tax Com'n, 2008 OK CIV APP 85, 195 P.3d 1280 (Div. 2 2008).

² Curry v. McCannless, 307 U.S. 357, 59 S. Ct. 900, 83 L. Ed. 1339, 123 A.L.R. 162 (1939).

³ Estate of Stuart v. State ex rel. Oklahoma Tax Com'n, 2008 OK CIV APP 85, 195 P.3d 1280 (Div. 2 2008).

⁴ [Bellows Falls Power Co. v. Com.](#), 222 Mass. 51, 109 N.E. 891 (1915).

⁵ [Hawley v. City of Malden](#), 232 U.S. 1, 34 S. Ct. 201, 58 L. Ed. 477 (1914); [Sturges v. Carter](#), 114 U.S. 511, 5 S. Ct. 1014, 29 L. Ed. 240 (1885).

⁶ [City of Memphis v. Ensley](#), 65 Tenn. 553, 1873 WL 4076 (1873).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.